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American Government in Action

The New Centralization

A STUDY OF INTERGOVERNMENTAL RELATIONSHIPS IN THE UNITED STATES

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To
George Stedman Sumner

Editor's Foreword

THE LITERATURE of politics has been one of the major forces in our national life. Much of it, especially before the 1860's, although polemic in purpose and form, contributed significantly to the shaping of governmental institutions and policies. Another main current in the literature of politics emerged just over a century ago. We had by the 1820's matured sufficiently to begin to review our own development as a nation. Scholars and lawyers became interested in the observation and appraisal of the institutional patterns of our political order. The new approach was reflected first in formal expositions of the Constitution and later in hardly less formal analyses of the workings of government. As the state became more complex in its organization and more comprehensive in its activities, observation and appraisal of government were, however, too often channeled into rather rigid —and frequently narrow—categories of analysis. The influence of cultural, economic, and social forces on political organization and procedure, the concept of government as the nexus of reconciliation or adjustment of conflicting ideas, interests, and institutions within a dynamic society such as ours, only incidentally affected the scholarly "disciplines." The attempt to apply to the American political scene the catholicity of outlook of an Aristotle or a Montesquieu is indeed yet to be made. "The art of governance" is all too

frequently identified with the minutiae of the government's structure or procedure.

There is one brilliant exception. Just a century ago this year there appeared the second volume of Alexis de Tocqueville's *Democracy in America.* His unique contribution to our understanding of America—today no less than in the 1830's—was that he saw government in action as a focus of the desires and purposes of the people in all their daily manifestations, as an agency for the democratic accommodation of cultural, economic, and social tensions within society.

It is in this tradition that we who are co-operating in this series have thought it worth while to add to the already voluminous literature about American government. Current discussion of a "functional" approach to its study is in fact a return to the course which De Tocqueville charted as to how and with what tools government should be observed and appraised.

No single refracting lens can, however, today catch all the variables in a political spectrum, the "invisible radiations" of which filter into every aspect of the hopes, desires, and purposes of a people bent on making the ideals and practices of democracy effective. We have sought to bring together, therefore, in this series the special competence and the varied outlook of some of those who in recent years have been responsible in significant ways for setting government in action or of observing and appraising it as it functions in the many aspects of the nation's life. The series as a whole should give citizens and students alike an adequate view of how our national government functions. The individual volumes analyze the institutional forms—constitutional, legislative, executive, administrative, and judicial—at the critical points where they affect, often determine, the workings of a democratic system. The problems selected for discussion in the series are today, as they have been in the past, foci of public debate and political pressure. They are areas in which emergent ideas

and forces are molding the future of American democracy. We hope that these volumes will stimulate further analyses, more searching appraisals, and more informed judgments by our fellow citizens of today and tomorrow.

The changing relations between national, state, and local governments in the United States are among the dynamic phenomena of our time. Older concepts of federalism which placed the nation and the states in watertight compartments of function and action have undergone profound modifications, especially during the past quarter century. The hardly less rigid principles of state supremacy over local governmental units have also been altered by the exigencies of the rapidly expanding services which are expected of government at some level. New demands on government in America have resulted in greater fluidity in its organization and activity. Professor Benson, in his *The New Centralization,* traces the new lines which are emerging in the traditional structure and practice of federalism. He illuminates the great variety of ways in which co-operation between the three levels of government in this country is taking shape. He explores the difficulties inherent in realignment of function and activity among these levels and charts a practical course for the closer integration between levels and agencies once jealous of each other's prerogatives. The blueprint which he offers is one of immediate concern to every American interested in making government in action more efficient.

PHILLIPS BRADLEY

Queens College
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Preface

Since the Revolutionary War, thoughtful students of American institutions have viewed the issue of centralization versus decentralization as one of the most important—and difficult—of their problems. Powerful economic and social groups have ranged themselves on both sides of the question at different times. Through most of the last century the issue was an undercurrent in presidential elections, congressional and legislative debates, and in the offices of policy-determining administrators. In one sense the Civil War was fought over this issue.

Unfortunately, most of these discussions must be characterized as of the type which generate more heat than light. Groups have changed their points of view on centralization to fit the needs of the moment. Few have taken time to analyze the fundamental values of our system of decentralization or to appraise new developments in the light of their effect on each individual value. There has been much talk about a vaguely defined "centralization," but little discussion of the actual impact of any new measure of centralization on the various values of our decentralized government.

Increasing activities of the federal government under the New Deal have made the issue of centralization one of sharply increasing importance in the last decade. The New Deal has been savagely attacked as undermining the essen-

tials of American government, and equally fervently supported as bringing about a necessary adjustment of American government to modern social and economic needs. Like their nineteenth-century predecessors, however, these discussions have rarely gone to the point of appraising change in the light of specific values in our system of decentralization.

This study is intended to aid in the critical discussion of these American intergovernmental relationships. The subject is so vast and the problems so complicated that the suggestions offered here are very tentative. Those of us whose task it is to watch the development of political institutions must ever be wary of wishful thinking, too great reliance on purely logical methods of approach, and inadequate information. All these faults and others are present in this volume. The only justification for its publication is that it may present new points of view to others.

It is a pleasant task to acknowledge my gratitude to a number of persons who aided me in the preparation of this volume. The greatest help came from Mabel Gibberd Benson, who contributed generously of her editorial skill, her practical experience with problems of state government, and her historical background in discussions of American federalism. Mr. Henry A. Krolik produced many ideas from his experiences in the public service. The University of Michigan Law Library and Bureau of Government Library gave their customary cheerful and too anonymous aid to a fretful researcher.

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Ann Arbor, Michigan
January, 1941

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Chapter I

Introduction

For over a century and a third after the inauguration of the American federal system in 1789, the basic assumption of the Revolutionary statesmen—that the closer the government to the people, the more healthful the body politic—remained a dominant principle of the American political system. Thus, of our three governmental levels—federal, state, and local—the last was entrusted with far the largest proportion of administrative activity. In 1835, the French observer, De Tocqueville, could say of the New England townships, ". . . although they are now subject to the state, they were at first scarcely dependent on it. It is important to remember that they have not been invested with privileges, but that they seem, on the contrary, to have surrendered a portion of their independence to the state. The townships are only subordinate to the state in those interests which I shall term *social,* as they are common to all the citizens. They are independent in all that concerns themselves."[1]

De Tocqueville constantly emphasized the essentially *local* nature of the American system. "Besides the general laws, the state sometimes passes general police regulations; but more commonly the townships and town officers, conjointly

[1]Alexis de Tocqueville, *Democracy in America: The Republic of the United States of America, and Its Political Institutions Reviewed and Examined.* (Translated by Henry Reeves, New York: A. S. Barnes and Company [no date, 1st Amer. ed.]) Part I, p. 67.

with the justice of the peace, regulate the minor details of social life, according to the necessities of the different localities, and promulgate such enactments as concern the health of the community, and the peace, as well as morality, of the citizens . . . the magistrates of the township, as well as those of the county, are bound to communicate their acts to the central (i.e., state) government in a very small number of predetermined cases. But the central (state) government is not represented by an individual whose business it is to publish police regulations and ordinances enforcing the execution of the laws; to keep up a regular communication with the officers of the township and the county; to inspect their conduct, to direct their actions, or to reprimand their faults. There is no point which serves as a center to the radii of the administration."[2]

Although in the fifty years which followed the publication of *Democracy in America,* the importance of the state and national governments increased enormously, Bryce, who devoted the major portion of *The American Commonwealth* to a discussion of the two higher levels, still considered it an American "dogma" that "where any function can be equally well discharged by a central or by a local body, it ought by preference to be entrusted to the local body."[3] "Americans," he notes, "constantly reply to the criticisms which Europeans pass on the faults of their state legislatures and the shortcomings of Congress by pointing to the healthy efficiency of their rural administration, which enables them to bear with composure the defects of the higher organs of government, defects which would be less tolerable in a centralized country, where the national government deals directly with local affairs, or where local authorities await an initiative from

[2] *Ibid.*, pp. 73–75.

[3] James Bryce, *The American Commonwealth.* (New York: The Macmillan Company, 1891) I, 418.

above."[4] Although, therefore, as we shall see later, the state functions were steadily increasing, on the whole, cities, counties, school districts, and townships retained control of roads, schools, policing, welfare, and minor courts up to the beginning of the depression decade.

When attention is turned to the role of the states, it is necessary to distinguish sharply between administrative and legislative activity. Even when, as in the early days of the nation, legislative activity was extremely limited in comparison with present trends, the state possessed almost unlimited legislative *power*. De Tocqueville, comparing state and local governments, commented that "a twofold tendency may be discerned in the American constitutions, which impels the legislator to centralize the legislative and to disperse the executive power."[5] "In America the legislature of each state is supreme." And he added, "The legislative bodies daily encroach upon the authority of the government, and their tendency . . . is to appropriate it entirely to themselves."[6] Bryce noted the increasing legislative or constitutional control over local indebtedness and local tax limitations and also the vastly augmented field of state legislation. By 1889, fairly elaborate state provisions concerning agriculture, banking, railways, corporation regulation, liquor control, hours of labor, workmen's protective legislation, pure food guarantees, and factory inspection were to be found in several states.[7] The difference here lies, however, in the movement away from laissez faire toward government activity. There is no basic change in jurisdictional theory.

The increase in state administrative activity is, however, more notable. De Tocqueville said, "In the state of Massachusetts the administrative authority is almost entirely re-

[4] *Ibid.*, I, 591.

[5] De Tocqueville, *op. cit.* (above, n. 1), I, 71.

[6] *Ibid.*, pp. 90–91.

[7] Bryce, *op. cit.* (above, n. 3), I, 247, 422, 470, 501–2, 584; II, 423–35.

stricted to the township."[8] "The state has no administrative functionaries of its own."[9] He did indeed note that "in some states . . . traces of a centralized administration begin to be discernible. In the state of New York the officers of the central government exercise in certain cases a sort of inspection or control over the secondary bodies."[10] However, he cited only a skeleton reporting system in the fields of education and poor relief and commented that "in general these attempts at centralization are weak and unproductive."[11]

By the time *The American Commonwealth* was written in the 1880's, administrative centralization was somewhat more advanced. In the field of education Bryce noted "a growing tendency for both the county and the state to interest themselves in the work of instruction by way of inspection, and to some extent of pecuniary subventions."[12] He mentioned the Michigan proposal for "a sort of state police for the enforcement of her antiliquor legislation,"[13] state institutions for "pauper lunatics,"[14] and "the establishment of state analysts, state oil inspectors, the collection and diffusion, at the public expense, of statistics."[15] "There is," he added, "visible in recent constitutions a tendency to extend the scope of public administrative activity. Some of the newer instruments establish bureaux of agriculture, labour offices, mining commissioners, land registration offices, dairy commissioners, and agricultural or mining colleges."[16] In spite of these examples of expanded state administrative functions, the scope of the

[8]De Tocqueville, *op. cit.* (above, n. 1), I, 74.
[9]*Ibid.*, p. 92.
[10]*Ibid.*, p. 84.
[11]*Ibid.*, p. 84, footnote.
[12]Bryce, *op. cit.* (above, n. 3), I, 588.
[13]*Ibid.*, p. 587, footnote.
[14]*Ibid.*, footnote 4.
[15]*Ibid.*, II, 424.
[16]*Ibid.*, I, 443.

movement should not be overestimated. Bryce himself commented that "the budget of a state is seldom large, in proportion to the wealth of its inhabitants, because the chief burden of administration is borne not by the state but by its subdivisions, the counties, and still more the cities and townships."[17] It would probably be correct to say that almost until the 1900's, state administrative activity was largely confined to the control of local units, of higher educational institutions, and of higher courts and to the provision of a small amount of supplementary policing, chiefly through the state militia.

A subject of sharper controversy than state-local relations, the "state-federal" tug of war has been going on constantly since 1789, with now one side, now the other predominating in prestige and power. De Tocqueville was convinced that, after the initial process of unification, the federal power started to decline, that the government of the Union "has invariably been obliged to recede" in contests with the states, and that "so far is the federal government from acquiring strength, and from threatening the sovereignty of the states, as it grows older, that I maintain it to be growing weaker and weaker."[18] He stresses particularly the federal compromise on the tariff issue in 1832. He might also, as did Bryce, have commented on state "victories" in connection with the embargo of 1808, the militia in the War of 1812, and the Cherokees in 1828–30.

Bryce, too, believed that there was a period when the national government was definitely declining, but he felt that after the Civil War a marked tendency toward centralization set in. "The state set out as an isolated and self-sufficing commonwealth. It is now merely a part of a far grander whole, which seems to be slowly absorbing its functions and stunting its growth. . . . The truth is that the state has shrivelled

[17] *Ibid.*, p. 490.

[18] De Tocqueville, *op. cit.* (above, n. 1), I, 438–50.

up. Its retains its old legal powers over the citizens, its old legal rights as against the central government. But it does not interest its citizens as it once did."[19] However, he did not attempt to overemphasize the then present state of centralization. Although he noted the increasing *tendency* "to invoke congressional legislation to deal with matters, such as railroads, which cannot be adequately handled by state laws, or to remove divergencies, such as those in bankrupt laws and the law of marriage and divorce, which give rise to practical inconveniences,"[20] he reported that the state did actually control practically all ordinary relations of citizens among themselves and to the government. "An American may, through a long life, never be reminded of the federal government except when he votes at presidential and congressional elections, lodges a complaint against the post office, and opens his trunks for a custom-house officer on the pier at New York when he returns from a tour in Europe. His direct taxes are paid to officials acting under state laws. The state, or a local authority constituted by state statutes, registers his birth, appoints his guardian, pays for his schooling, gives him a share in the estate of his father deceased, licenses him when he enters a trade (if it be one needing a license), marries him, divorces him, entertains civil actions against him, declares him a bankrupt, hangs him for murder. The police that guard his house, the local boards which look after the poor, control highways, impose water rates, manage schools—all these derive their legal powers from his state alone."[21] This quotation makes vividly clear how little the federal unit compared in internal force with either the state or local governments. Its powers over coinage and currency, bankruptcy laws, and several smaller items did not—even when exercised—give scope for extensive control, and only

[19]Bryce, *op. cit.* (above, n. 3), I, 537.

[20]*Ibid.*, II, 710.

[21]*Ibid.*, I, 411–12.

through the power to levy tariffs for revenue and protection, and through the loosely defined expenditure powers could it assume any very significant domestic status. For a century and a half the federal government remained very largely what Jefferson once called it—the American department of foreign affairs.

This system—with its administration chiefly concentrated on the local level and its legislation chiefly concentrated on the state level—remained practically unchallenged until yesterday. The nation prospered—and political scientists rationalized a political system in which prosperity existed. But when the great depression came, when the demands on government became intensified almost over night, when it was found that we had neither theory nor machinery for handling a national crisis, the traditional system became an object of study and concern. The utility of forty-nine sovereign units —forty-eight governors, forty-eight state legislatures, forty-eight state supreme courts, sharing, often duplicating, sometimes obstructing, federal activities in dozens of fields—was sharply challenged. Critical eyes were turned toward our three thousand or more counties which vary greatly in shape, size, and population, toward our tens of thousands of other local governmental units. It was clear that school districts, cities, counties, townships, sometimes jammed too thickly into areas of congested population, sometimes scattered irrationally over thinly settled sections, had been allowed to spring up without plan or purpose.

So appalling was the spectacle that many a scholar and politician has hastily concluded that the panacea is centralization. It is undoubtedly true that the unsystematic results of our "planned decentralization" are at times discouraging. The machinery unfortunately became rigidly entrenched before the nature of the social and economic problems with which government in this country must deal had become clear, and the lack of flexibility has added further trouble.

However, to embark hurriedly upon a program of equally rigid centralization is not the solution. Certain steps toward a revised interlevel pattern of government have already been taken. It is wise to analyze and evaluate these before we either applaud or censure them unduly. But even before attempting this, it is wise to evaluate the traditional "American way" which is the point of departure for all future policies. For this reason, the two following chapters will be devoted to consideration of the arguments for and against a decentralized federal system.

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Chapter II

The Brief for Decentralization

IT MUST be remembered that the "decentralization" which this essay attempts to evaluate is a somewhat protean word. It can mean political decentralization or it can mean administrative decentralization. The latter is pre-eminently a question of management policy. It may exist—and often has done so—in countries highly centralized politically. When Madison said during the constitutional controversy in 1787–88, "It would not be difficult to show that if [the states] were abolished, the general government would be compelled, by the principle of self-preservation, to reinstate them in their proper jurisdiction,"[1] he was by no means pacifying his opponents. Every ardent Antifederalist realized too clearly the difference between political and administrative decentralization to accept, as a substitute for the former, a system based on the expediency of breaking down a large area into more workable units of control.

This difference must be constantly in mind in any consideration of the pros and cons of decentralization. When in the course of this study the word "decentralization" is used alone, the political meaning is implied. Administrative decentralization is meant only when fully expressed. Most—but not all—of the advantages and disadvantages outlined in

[1]James Madison, Alexander Hamilton, and John Jay, *Federalist Papers*, any edition, No. 14.

this and the following chapter apply to political decentralization. The most exclusively political of the arguments are more properly applicable in the federal-state sphere, but much of the material is also helpful in illuminating state-local relations.

Bulwark against Usurpation

In this era of fascist dictatorships it is often felt that one of the greatest advantages of the decentralized system is its latent capacity for resisting dictatorial regimentation. If—to be fanciful—a president wished to become dictator, he would be forced to negotiate forty-nine coups rather than one. Certainly a respectable number of governors—all of the opposition party and undoubtedly many others—would rise up with rugged individualism to resist coercion from Washington on matters of internal concern, and in the event of military pressure would undoubtedly call out the National Guard before turning over their state houses to *staathalters* (men placed in charge of the German states by the Hitler regime). Moreover, it is undoubtedly true that the average American citizen is probably less "national minded" as a result of a century and a half of federalism than are the inhabitants of many other countries. That is not, of course, to say that it is impossible to influence the American population on a national scale. But there does exist sufficient confusion of loyalties between state and national governments that one or more governors raising the banner against "fascism" could achieve a considerable amount of counterpropaganda.

Insulation

Justice Holmes coined the happy phrase "the insulated chambers" of the several states. He was referring to their utility for purposes of governmental experimentation, but the phrase is equally descriptive of their capacity for localiz-

ing some of the more undesirable manifestations of public intolerance and wrongheadedness. The sovereignty of the states, which undoubtedly does give rise to many vexing problems of interlevel adjustment, works in both directions to check "oppression of minorities." For instance, it seems unlikely that any widespread and organized anti-Semitism, even if it infected other states, could prevail in New York, the population of whose chief city is one third Jewish; moreover, it seems likely that the protection of the largest and wealthiest state in the Union might go far to alleviate the situation elsewhere. Conversely, although the federal government has been unable to enforce nondiscriminatory treatment of the Negro by Southern state governments, it is notable that legalized prejudicial treatment has not spread northward. There is much shameful social and economic discrimination against our colored fellow citizens, but it has not extended to the legal sphere. For example, in a large Midwest metropolitan area a Negro has long held one of the highest and most important administrative positions. Bryce stated this value of federalism: "If social discord or an economic crisis has produced disorders or foolish legislation in one member of the federal body, the mischief may stop at the state frontier instead of spreading through and tainting the nation at large."[2] And to return to the second point hinted above, the fact that the disease is isolated may in itself tend to promote the cure. Montesquieu, praising the values of federalism, pointed out: "Should abuses creep into one part, they are reformed by those that remain sound."[3] It is striking how quickly Louisiana has returned to the main current of American governmental ideology after the Long regime. It may well be that the localization of the prejudice against the Negroes has been an important factor in the considerable

[2]Bryce, *op. cit.* (Chap. I, n. 3), I, 345.

[3]Montesquieu, *The Spirit of the Laws,* any edition, Vol. I, Book IX, Chap. 1.

improvement in Southern attitude and in the decrease in annual lynchings during the past fifty years from 231 to 3. No state desires for too long to play the rôle of solitary or even minority villain.

Separation of Issues

Potentially, at least, the federal system makes possible the very salutary separation of state and local from national issues. One of the great difficulties even now for the thoughtful voter is the number of judgments registered by a single × on the November ballot. The choice between presidential candidate A whose foreign policy we approve and whose domestic policy we abhor and candidate B whose domestic policy we should like to support but whose foreign policy we consider disastrous, is sufficiently painful, but if—as under a unitary system—that same × covered decisions on state sales taxes, county relief administration, and municipal sewage disposal plans, we should in effect be abrogating our right to decide on nine tenths of the issues involved. It is true that the full value of this aspect of federalism is far from being achieved. The form of ballot which encourages block party voting and the human tendency, especially in presidential election years, to subordinate our judgments on state and local candidates to those on national affairs both tend to counteract the advantage. But the fact remains that these mechanical or psychological factors are not fundamental. The nature of the federal system permits us to register our conviction that the program of one party is nationally advantageous, that the state program of another party is superior within the state and that perhaps a "nonpartisan" local administration may promise the best results.

Administrative Efficiency

Even while granting that most of the states are inferior to Washington in administrative efficiency, many students

of government are convinced that a government adequate to a large country necessarily becomes unwieldy when its administration is too highly centralized. Economists tell us that it is possible for corporations to reach a size at which the economies of large-scale operation are more than counterbalanced by the inefficiency of a top-heavy overhead management. It is, of course, difficult to say just where this point of diminishing returns occurs. Some people feel that it has already been reached in the federal government—that a million civil employees is an unmanageable staff; that scores of relatively independent federal agencies must inevitably fail to co-ordinate their activities; that the machinery is so bewilderingly complex that not even the well-intentioned and persevering can find and root out waste and duplication and inefficiency and that the inertia of large-scale organization is difficult to overcome.

Unquestionably some of these criticisms are based on "theory." The accompaniment of the so-called American "cult of bigness" has been a "cult of smallness"—at times purely emotional. Arguments validly aimed at monopolies and holding companies have been turned at times out of their appropriate channels and used where the evidence is insufficient. However, the accusations against the federal government are not entirely without foundation. Direct contacts with both state and federal government, as well as a variety of recent studies, suggest that the federal government ranks below a half dozen of the larger states in various aspects of administrative efficiency. Comptrolling and auditing, for example, are better handled in Massachusetts, New York, Maryland, Virginia, and New Jersey and other states than under the federal government. Moreover, information on the work of the various departments is more readily exchanged in many state capitals than in Washington. Amusing and yet symptomatic was a situation in which the writer once found himself acting as unofficial federal liaison officer. He

referred one federal agency in Washington to another federal agency in Washington for information which had been requested from a nonfederal office in Chicago. Anyone who has done any work involving co-ordination of two or more federal bureaus or departments knows how difficult it is to secure all the necessary clearances. Important and often urgent problems remain unmet for weeks or months while counsels, administrative assistants, and bureau directors debate relatively unimportant pros and cons. Oftentimes the federal administrative machinery moves with a ponderous slowness despite the eager and intelligent efforts of at least some of its employees to secure action.

Some of the federal administrative problems stem directly from the huge area of the United States. For instance, all would admit that the maintenance of efficiency in hundreds of thousands of post offices from Maine to California is, under any system, a difficult task and under a completely centralized system, a stupendous one. It would occur to few of us to lay the discourtesy of our mail carrier at the postmaster general's door; yet, under the existing order, it is the postmaster general who is responsible. The same geographical difficulties of remote control occur in other fields—law enforcement, regulation, service programs. It is, of course, true that the difficulties are not insuperable. Examples of excellent federal administration exist, as do a few examples of excellent retail business enterprise on a nation-wide scale. But the fact that a problem can be overcome does not prove that it might not be wiser to obviate it.

Administrative decentralization is the most obvious technique for overcoming this disadvantage of federal activity, but the cure itself raises new problems. For instance, while many bureaus are now establishing regional offices, they are finding that *formal* decentralization by no means fills all needs. What powers shall be "delegated" to the regional director? Shall he have authority to approve or disapprove

instructions going from staff specialists in Washington to staff specialists in the field? Shall any important policy decisions be entrusted to regional officers? And, if so, what type of decisions? Is a complete crew of staff specialists necessary for each region? Shall the regional offices be provided with mechanism for co-operation with other governmental units in the area? All these and many other questions must be carefully solved if administrative decentralization is to be successful. In fact, thus far no departments except the more or less unified defense departments have attempted departmental as contrasted to bureau or divisional regional offices.

Political Laboratories

Mr. Justice Holmes was not the only one who believed in the "experimental" value of the federal system. Bryce said: "Federalism enables a people to try experiments in legislation and administration which could not be safely tried in a large centralized country. A comparatively small commonwealth like an American state easily makes and unmakes its laws; mistakes are not serious, for they are soon corrected; other states profit by the experience of a law or a method which has worked well or ill in the state that has tried it."[4] And another English writer remarked that "the western states have been the Scandinavia and Switzerland of the New World—laboratories for innumerable experiments in direct democracy."[5] While the objection that the scientific aspects of this experimentation have too often been negligible is not without foundation and will be discussed elsewhere, it is true that many policies and techniques later adopted by other states or by the federal government have been tried out on state testing grounds. Workmen's com-

[4]Bryce, *op. cit.* (Chap. I, n. 3), I, 344–45.

[5]K. Smellie, *The American Federal System.* (London: Williams and Norgate, Ltd., 1928) 46.

pensation, for example, has spread from state to state until today almost everywhere in the Union laborers have some security against injury. For fifty years states have been "experimenting" with declaratory judgment acts, whereby courts are permitted in certain circumstances to pronounce judgments even when there is no clash of interest—of the conventional "case" type—over a law. Five years ago the federal government decided to adopt such an act. Nation-wide prohibition may have been a "great experiment" but it was a clumsy and wasteful one. Since its repeal, far more significant experimentation is taking place in the field of liquor control, for the various states are trying out diversified methods. For instance, more than a dozen states have established governmental monopolies of liquor sales. It will take time and study to secure the maximum benefit from this experimentation, but there is reason to hope that practice will sift out the unsatisfactory and confirm the better systems.

However inadequate many of the earlier pieces of state social legislation may have been, they were precedents and harbingers of the federal Social Security Act, and their educational value was considerable. Wisconsin, of course, preceded the federal government in the field of unemployment compensation, and it is by no means generally agreed that her system of employer reserves is inferior to the more widely used plan of pooled reserves. Whether or not for other reasons unemployment compensation is properly a matter of state administration, the present organization does facilitate the accumulation of comparative data.

There has been an unusual amount of state experimentation in so-called "direct democracy." Popular referenda on certain issues, popular recall of public officials, direct primary elections to nominate party candidates, popular initiative of laws or constitutional amendments—all have been tried out by the states. Although some of these devices have worked

badly and students of government are not agreed definitely on which ones can be fitted harmoniously into the total system, it is nevertheless encouraging that the states are eager and able to carry out these experiments.

As we shall see in the following chapter, it has been maintained that the experimentation is often haphazard, the recording and evaluative technique inadequate, the utilization by other states purely imitative, and the hand of "pressure groups" too obvious when laws of one state are copied by other states. Many of these charges are well founded. We have not made the best use of our state laboratory facilities, but their very existence is a great potential—and partially realized—asset of the American decentralized system.

It can be said with even more certainty that decentralization of political power to local units has great experimental value. The use of particular technical devices, such as police radios or chemical fire extinguishers, rapidly spreads from one urban unit to another, but in these cases, of course, the process is expedited by equipment salesmen. Even more successful has been the experimentation in forms of municipal government. Comparative studies in this field have been extensive and the conclusions far more clear cut than in most fields of comparative political science. The present widespread trend toward the city-manager and strong-mayor forms is the result. In matters of budgetary control, civil service, and welfare policies, local experimentation has frequently led to state adoption. In fact, it can almost be said that usually where cities have not proved successful governmental laboratories, the fault lies with restrictive state legislation. Illinois, for instance, retards its own development by shortsightedly refusing to allow municipal experimentation. Even more rigid, and consequently even more unfortunate, has been state interference with county and township experimentation.

Education of the Citizenry

The educational advantages of the federal system are twofold. In the first place the fact that it has become a cliché does not alter the truth of the statement that the existence of democratic government depends upon a population trained to democracy. The persistently undemocratic nature of eastern European and Asiatic governmental systems has long been explained by this principle, and recent events indicate that its operation is not confined to the so-called backward areas.

Just how is a population "trained to democracy"? Ideally the schools should be competent to the task, but that ideal is only partially realized at present. To some extent the inadequate school training can be supplemented later by participation in the the activities of vigorous and independent local governments. Thus a realization of the problems, responsibilities, and privileges of popular government can be widely diffused by virtue of the possibility of "lay" membership on school boards, city councils, boards of supervisors, and similar small governmental bodies.

In the second place, for the individual interested in more continuous government service—either legislative or administrative—this local training is important. Congressmen are often "graduates" of these same city councils and boards of supervisors and of the state legislatures. For example, 35 of the senators and 149 of the representatives in the Seventy-third Congress (34 per cent and 36 per cent of the respective totals) had served "apprenticeships" of an average length of four and a half years in state legislatures.[6] With the extension of civil service, local governmental elective positions become an increasingly important training ground for politicians. Corresponding studies have not been made

[6]John Brown Mason, "184 of Us in Congress," 7 *State Government* (June 1934) 126–28.

of federal administrators, but there is no doubt that the same tendency exists here as in the legislative field.[7] It is not to be denied that some of the lessons learned in state legislatures are undesirable—that "patronage-mindedness" may have been fostered by local conditions, that there is often inadequate deliberation on important issues and an atmosphere too hurried to permit careful study before decisions are registered. However, the essentials of a democratic system—ability to work successfully with one's peers, willingness to compromise at least on details, if not on principles, in order to secure a workable program, final deference to majority votes—these things may be learned through experience in local and state units of government.

Adaptation to Local Needs

The impossibility of adjusting blanket policies and techniques to all the diversified local problems and conditions in so extensive a country as this has long been a chief argument for decentralization. Social legislation adapted to Northern states, it was claimed, was neither feasible nor desirable in certain Southern areas. Laws suitable in a thickly populated, largely urbanized, and highly industrial state would ill fit the situation in Nebraska or Nevada.

Certainly it is possible to cite instances both of uniform legislation and of uniform administrative policies which have failed simply because they did not respect these essential differences. For example, prior to 1919, several states had adopted state-wide prohibition laws. Many of these laws had been in effect for years and apparently were proving relatively satisfactory. Prohibition was consonant to the wishes of a substantial majority of the local citizens in each case

[7] See A. W. MacMahon and J. D. Millett, *Federal Administrators.* (New York: Columbia University Press, 1939.) Although evidence on this point is not succinctly presented in the book, the biographies indicate that numbers of federal officials have served in state positions.

and enforcement proved more or less possible, though somewhat handicapped by interstate evasion. But the total failure of the attempt to impose a national prohibition law is notorious. Popular reaction was prompt and vigorous. The example of those fifteen years when respect for law and for government officials sank to a shameful ebb, when state and local officers—backed by public opinion—co-operated feebly or not at all with federal agents, points clearly the potential dangers of ill-advised efforts to disregard local differences.

That the same difficulties can arise from blanket administrative policies is evidenced from the history of the Civil Works Administration, which tried to adopt nation-wide wage scales. An impartial observer has commented as follows on the failure of the experiment: "Protest over the wage scales and the attraction that civil works jobs had for common labor, particularly in the rural South, was of major importance and resulted in the serious crippling of the C.W.A. structure even before the financial crisis was reached. The pressure to lower the scale came from friends as well as political enemies of the administration. Mr. Hopkins resisted it as long as he could, but his defense that P.W.A. scales must be observed because his funds came from that body was thin and finally gave way. Three days before the retrenchment order was out, he was obliged to yield on this point. States were authorized to allow staggered employment in their rural sections, cutting their hours per man from 30 to 15 and adding a second crew to alternate with the first. This meant, in the Southern states, civil works wages of six dollars a week for the great mass of workers."[8] The federal system—wisely organized—avoids such difficulties as these.

[8]Russell H. Kurtz, "An End to Civil Works," 70 *Survey* (February 1934) 35–37.

Conclusions

It is apparent that the traditional American decentralization possesses many advantages—advantages not to be lightly discarded in a sudden "reform movement" toward centralization. A system of relatively autonomous units is valuable as a safeguard against possible *coups d'état,* as a quarantine against sociological diseases, as a device for separating political issues which need separation. It permits administration on a more workable scale, adaptation to local needs, and training in self-government. However, the very fact that there exists a definite trend toward centralization proves that decentralization has either failed to achieve its inherent advantages or that other advantages not inherent to it seem increasingly significant. This other side of the problem will be considered in the following chapter.

Chapter III

The Weaknesses of Decentralization

COMMENTATORS who regard federalism as the key which has opened a Pandora's box of governmental ills are probably as remote from the truth as those who regard it as the key to a governmental celestial city; nevertheless it must be realized that many evils have resulted because of—or in spite of—decentralization. In some cases the machinery is not geared to the theory. For instance, the military weakness of the states limits their powers against would-be dictators. The fact that national, state, and local elections are held simultaneously plays into the hands of politicians who desire to confuse the issues. In other cases every advantage is partially offset by some disadvantage. While citizens in office are being trained in self-government, their communities may be suffering from the effects of their well-meaning but inexperienced legislative and administrative efforts. The following are the chief charges leveled at our decentralized system.

Obstruction of Social Legislation

It will be recalled that under the Tenth Amendment to the Constitution all powers not expressly granted to the federal government are reserved to the states. The powers so granted do not include the general "police power"—the authority to legislate for the public health, safety, and welfare. It is true that the courts have declared certain aspects of

the police power to be implied in the powers of taxation and of regulation of interstate commerce, but the great bulk of social legislation remains within the jurisdiction of the state. At first glance it seems not unreasonable that this should be so. Social legislation is closely bound up with local economic conditions with which the state governments are in close contact. However, it will also be recalled that freedom of commerce between the states is constitutionally guaranteed. In actual practice this very seriously affects a state's theoretical independence in the matter of social legislation. Although, as will be discussed in Chapter VIII, the lack of state activity in this field is only partly due to state hesitancy and partly to judicial checks, on the whole there has developed a situation in which the states would not, and the national government could not, pass certain socially desirable legislation affecting internal conditions. The ways in which this problem has been partially met will be discussed in later chapters. At the moment we are concerned only with the situations which led to a shift of functions from the state to the federal government.

Many a state honestly felt that its hesitation was due not to lack of desire but to fear of economic consequences. Prohibited by the federal Constitution from "protecting" their own industries by tariffs or other legislation restricting imports, the states argued that laws requiring shorter hours or higher wages for women and children or otherwise improving working conditions would handicap their manufacturers, who would be competing against manufacturers in states which permitted long hours and low wages. Influenced by such an argument, the legislator who hesitated to vote for progressive legislation did not necessarily "sell out" to "ruthless business." He may sincerely have felt that the possible decline of industry in his state as a consequence of social legislation and the resulting unemployment and distress were themselves genuine social evils.

But a still more specific fear withheld him from voting for improved working conditions or imposing taxes on industry with which to finance social welfare activities—the fear that large industries would move out of his state and into the jurisdiction of some more lenient legislature. It is probable that this view was not entirely groundless. A few companies may have migrated from Wisconsin because that state passed the first unemployment compensation taxes in the country; some of the shift of the New England industries to the South and West may have been caused by higher social standards legislated by those states; it is said that certain mining companies with scattered holdings openly threatened to operate only in states where higher taxes were not adopted.

But—groundless or not—the fears were a potent factor in impeding social legislation. If legislators *believed* their industries likely to migrate, they would hesitate to test the reality of the threats by passing laws unpalatable to the business interests. As Harold Groves, a former tax commissioner of Wisconsin, comments: "Whether or not taxation is a vital factor in the relocation of industry is open to question. But there can be little question that the threat of relocation is a vital factor in shaping state and local tax systems. The author knows of one liberal state legislature which actually modified its inheritance tax because one old person of considerable wealth threatened to leave the state and establish residence in California. Quite characteristically, the state legislature took no pains at all to determine whether or not the California inheritance tax law was less favorable than that of the state which made the change. There never has been a debate concerning the adoption of a state income tax in any state, so far as the speaker knows, where the threat of industrial migration did not play a large part in the deliberation."[1]

[1]Harold M. Groves, "The Effect of Tax Differentials and Tax Exemption upon the Relocation of Industry," *Proceedings* of Thirty-first Annual Conference on Taxation of the National Tax Association (1935) 560–61.

A detailed study of Massachusetts manufacturing during the last decade prepared by the Massachusetts Commission on Interstate Cooperation and presented to the General Court of the state in June, 1939, did not substantiate the theory that high taxation or high labor standards were important causes of the severe decline of the state's textile and boot and shoe industries, and the commission definitely did not recommend the widely circulated proposals to restrict wage and hour standards to the federal levels or to repeal certain other labor legislation. However, it is interesting to note that even this commission in its basically progressive recommendations as to taxation and legislation did suggest that "in adopting additional labor and industrial legislation, due regard be given to the status of such legislation in competing states."[2] The impact of free competition on internal social policies cannot be overlooked.

But even granting that one or more states would take a decisive stand on certain issues, the broader aspects of the problem remain out of control. If a state which had internally prohibited child labor, for instance, also prohibited the sale within its borders of goods manufactured by child labor in another state it would be unconstitutionally interfering with interstate commerce. A score of years ago the federal government attempted to remedy this difficulty by barring from interstate commerce goods manufactured by child labor and by taxing goods manufactured by child labor, but both of these laws were declared unconstitutional by the Supreme Court.[3] In actual practice the control of child labor became impossible and to opponents of child labor there seemed only one way in which this situation could be remedied—an

[2]Final Report of the Commission on Interstate Cooperation to the General Court concerning the Migration of Industrial Establishments from Massachusetts (Boston, 1939) 42–43.

[3]*Hammer* v. *Dagenhart*, 247 U.S. 251 (1918). *Bailey* v. *Drexel Furniture Co.*, 259 U.S. 20 (1922). Since this manuscript was written the court has reversed itself and permitted federal control.

amendment to the federal Constitution which would empower Congress to regulate conditions of child labor. Thus far thirty states have ratified such an amendment. Obviously, however, constitutional amendments to cover every aspect of social legislation are impracticable, and unless the recent congressional legislation barring interstate shipment of goods manufactured by child labor is more favorably considered by the Supreme Court than its predecessor was, or unless other solutions can be found, the twilight zone remains.

Because the major stress in this section has been laid on problems dealing with industrial evils, it should not be imagined that this is the only field where obstruction is encountered. Many desirable conservation programs have been checked by this same conflict of interstate commerce and internal policy. Although European countries, for instance, legislate against the excessive cutting of privately owned forests, the failure of the American states to do so can be traced in large part to the contention that such restrictions increase the cost of production and handicap the local industry in its competition with lumber companies in other states. Oil-conservation measures were long postponed for a similar reason.

Interstate Evasion

The industrial migration mentioned in the preceding section is, of course, one method of evading the laws of one state by taking "sanctuary" under the laws of another. But decentralization gives rise to many other types of interstate evasion. Just as in federated India citizens temporarily "move" from states prohibiting child marriage to states permitting it and return as soon as their children have been married, so in America people "move" to Nevada for six weeks to acquire a divorce either because they are unwilling to wait the statutory period required in their home states or because the grounds for divorce are less extensive in the lat-

ter. What constitutes reasonable ease of divorce is, of course, a controversial issue, but governmentally speaking, it is undesirable for the citizens of a state to be able so easily to evade the laws under which they are permanently residing. Several states have enacted "gin marriage" laws, laws which require an interval of several days between the issuance of a license and the performance of the marriage, only to find a spectacular increase occurring in the number of marriages performed in the nearest towns of neighboring states. "Marrying justices" in local Gretna Greens do a land-office business. Incidentally, in this case the repercussions have been similar to those noted in the first section. One or two states whose initial restrictive measures were popular among the majority of citizens repealed them as a result of the ease of evasion.

Law enforcement is seriously handicapped by the facility with which criminals can elude the jurisdiction of local police and state troopers by the simple process of crossing an unpatrolled geographical line. In an era when criminals in a high-powered car can race through a dozen counties and four or five states in a single afternoon, the weakness of decentralized police jurisdiction is obvious. Some of our law-enforcement officers have made earnest and at least partly successful efforts to overcome this boundary difficulty by arranging to co-operate with law-enforcement officers in neighboring jurisdictions. Despite their attempts, however, it is still frequently true that a police officer of one city or state has no legal power in another city or state. When he is out of his jurisdiction he loses the legal right of making arrests necessary for effective action by any peace officer. Under prevailing conditions it is difficult to secure the prompt arrest of a fugitive who has escaped to another state, and matters are further complicated by the legal formalities which must be observed before such a fugitive can be returned to the state where the crime was committed.

Under the so-called "Golden Rule" employed by some municipal police forces the city agrees not to bother criminals who do not operate within its limits. Although such an agreement eliminates many problems for a few police commissioners or mayors, it has been very damaging for the country as a whole. Granted comparative security in some cities, gangs of criminals, in these days of rapid transportation, can prey more readily on others.

These same factors also promote tax evasion. There can be little doubt that the service stations which line the highway at each point where it passes from a low gas-tax state to a high gas-tax state do not make all their profits from tourists. Many of the permanent residents of the high gas-tax state undoubtedly seize this opportunity for evasion.

To some extent, of course, a limited amount of this type of evasion is an almost inevitable consequence of diversified laws within adjacent states. The temptation to the would-be evader is at all times strong, and it is unfortunately true that some states exploit the situation to their own advantage. It is obvious, for instance, that Nevada is openly bidding for the divorce trade when one considers that although "legal residence" for divorce purposes is six weeks, "legal residence" for welfare purposes is two years.

Delaware and other states are notorious for the laxness of their corporation charter laws. W. Z. Ripley gives a number of examples of advertisements for incorporation:

"Charters—Delaware Best, Quickest, Cheapest, Most Liberal. Nothing need be paid in. Do business and hold meetings anywhere. Free forms. Colonial Charter Company, Wilmington, Delaware."

"This beats New Jersey—Charters procured under South Dakota laws for a few dollars. Write for corporation laws, blanks, by-laws, and forms to Philip Lawrence, late Assistant Secretary of State, Huron, Beadle Co., South Dakota."[4]

[4]Both illustrations are from W. Z. Ripley, *Main Street and Wall Street.* (Boston: Little, Brown & Company, 1927) 29.

In the large industrial state of Michigan, to take a more or less typical example, many of the biggest concerns—the bulk of whose productive activities are centered in Michigan—have Delaware or other out-of-state charters. In a very real sense this practice involves an encroachment on state sovereignty since for a small charter fee one state can sell to a company relative freedom from the regulatory program of the other state or states in which the company is to operate. Yet the federal Constitution demands that one state accept another's charter and thus abrogate its right to regulate the powers, privileges, and financial structure of its major industries. Provisions regarding the fiscal and other responsibilities of the directors of the corporation, the power of the corporation to conduct a wide variety of unrelated activities, the type of accounting to the shareholders and the public, the nature of the securities outstanding—all these are subject to the laws of the state in which the charter is granted. Unquestionably it is wise to permit corporations to operate in various states, but it is unfortunate that certain states grant corporate charters so freely.

Decentralization and the Financing of Services

There is certainly disagreement as to the desirable extent of governmental services, but within reasonable limits these services are approved by all. No one today challenges the inclusion of education, road construction and maintenance, fire and police protection, certain health and welfare activities within the governmental sphere. Traditionally most of these have been deemed of "local" or at most "state" concern, and the danger of "centralization" has been a constant cry of those interested in maintaining unchanged our federal system. But it has become increasingly apparent that the problem is not one of political theory alone—it is one of economic fact as well. It is as true now as when Hamilton

said it that "money is the vital principle of the body politic"[5] and the successful retention of the decentralized pattern depends upon our ability to reconcile it with two facts.

First, in the gigantic economic system of the United States the wealth of different areas varies widely. The citizens of Massachusetts, New York, and California possess a proportion of wealth far above the national average. On the other hand, the profits from the major economic activities of such states as West Virginia and Arkansas are in part drained off to security holders in other states. Within a state the disparity of tax resources between areas may be even greater. Complete decentralization—complete local responsibility for governmental services—may then result in a "spread" between the standards of different districts which would shock even the uncritical believer in a national "American" standard. Of course, the situation was dramatically evident in the early years of the depression. The relief burden went far beyond the tax resources of countless localities and even states, and President Hoover's initial contention that "relief" was a local problem simply indicated a failure to see that economic disaster nullified political theory. Actually, the dream of local responsibility at such a time was particularly fanciful since the areas and communities which in normal times had the lowest tax resources were in many cases those in which the tax resources were hardest hit and the relief load was the heaviest.

But the same weakness is evident even in normal times. It has been estimated that a reasonable effort to tax available resources and to administer the revenue efficiently would mean—in the field of education—that the sum of money annually available for the education of each child would vary among the states from a high of $125 in New York to

[5] *The Federalist Papers*, No. 30.

a low of $12 in Mississippi.[6] Admittedly these figures are estimates, but the actual expenditures per pupil in the various states for 1935–36 seem to indicate that the spread is approximately correct. In New York the sum was $134—in Mississippi $27.[7] There is undoubtedly a difference in living costs, but it is not great enough to equalize these differences in tax resources. Obviously, state and local government in Mississippi simply will not be able to finance the quality of education available in New York. One shocking situation—the existence of a considerable amount of illiteracy in this great and wealthy country—is in large part a result of these financial inequities. The 1940 census reports almost three million illiterate Americans. Another interesting fact is evident from the figures published by the Advisory Committee on Education which show that on the whole the poorer states, the ones with substandard schools, are making more strenuous efforts than the wealthy states to achieve good educational systems. They not only have higher general tax rates, they also devote a higher percentage of their total tax resources to the support of public schools. Although, absolutely speaking, Mississippi's $27 per child falls far below the national average, it far exceeds the national average of percentage of revenue devoted to education. Actually, on the other hand, New York's $134 is *below* the national average percentage allocated to that purpose. Here is one case where there can be no question of equalization running counter to a state *policy*.

The same discrepancy is to be found within states. Fashionable residential suburbs can afford expensive school systems, admirable health, fire, and police protection, and excellent governmental services of all kinds. Incidentally, of course, almost none of the available revenue in these com-

[6] *Report* of the Advisory Committee on Education. (Washington, D.C.: Government Printing Office, 1938) Table 2, p. 226.

[7] *Ibid.*, Table 1, p. 225.

munities need be allocated to welfare or relief costs. It is not strange that they are firm believers in the values of "local self-government"! But these fortunate communities are more than balanced by the dingy suburbs of poor metropolitan areas, where an almost prohibitive tax rate may not be able to finance adequate welfare activities, adequate schools, or adequate protective systems.

Second, the larger units have proved to be far more efficient in the collection of taxes. It is true that the inadequacy of local units has often resulted from restrictive legislation or from arbitrary constitutional and charter limitations on the general property tax, which is the major source of local revenue. However, the fact remains that the percentage of total taxes collected by the states is increasing, while that of the local units is decreasing. In 1930 the states collected 20 per cent of the total; local units 45.2 per cent. In 1938 the states collected 26.1 per cent of the total; local units 33.2 per cent.[8]

In other words, the smaller units are becoming less able to carry unaided the burden of government services as the need for interarea equalization grows more pressing.

Interareal Barriers

Many recent writers have focused their attention on "interstate barriers" and in so doing have probably created an exaggerated impression of the dangerous tendencies of such governmental action. The mass of literature on the subject in all probability is merely one expression of a "depression psychology," but the theory of "protecting" intrastate business constitutes a serious challenge to the federal system. Whatever potential value true "protection" may possess is not achieved by these state devices. For instance, discrimina-

[8]Albert Lepawsky, "America's Tax Dollar," 207 *The Annals of the American Academy of Political and Social Science* (January 1940) 186.

tory tax legislation increases the cost of specific commodities within the state without materially increasing wages. As we have already noted, the fear of losing industry prevents the logical "bargaining" of protection for higher wage levels. Moreover, the actual gains to the industry are slight because retaliatory legislation by other states inevitably follows.

There are six major fields in which these barriers have been used.

(1) The Twenty-first Amendment, when repealing prohibition, also removed, in connection with the liquor traffic, the constitutional interdiction against state interference with interstate commerce. According to Supreme Court interpretation of this provision, the states are permitted to pass taxes discriminating against alcoholic products of other states. Many states availed themselves of this right, retaliatory legislation in other states promptly followed, and interstate "beer wars" and "wine wars" have been the rule since 1933.

(2) Interstate trucking has been seriously handicapped by the diversity of state standards for size, lighting, or equipment of trucks. Maximum gross weights range from 18,000 pounds in Kentucky and Tennessee to 120,000 pounds in Rhode Island; maximum lengths from 30 feet in Kentucky to 85 feet in Georgia. Maryland and Massachusetts have no length limits. Between some adjacent states the variation has been so great that interstate trucking companies have found it necessary to have several fleets of trucks—conforming to the regulations of the individual states through which the service operates—and to transfer goods from one truck to another at state borders. Where the diversity is less fundamental a truck may be able to meet all requirements by carrying a collection of impedimenta which makes it resemble a cross between a Rube Goldberg invention and an overdressed Christmas tree. But even the matter of equipment is at times hopeless. Green "clearance lights" required in one state may be prohibited in an adjacent one. Heavy

fees have also been imposed by some states on "foreign" trucks for the use of the highways. Legislators contend, of course, that all these measures are designed either for revenue purposes or for the best interests of the state, but there are observers who feel that railroad opposition to shipment by truck is not wholly unconnected with this type of legislation.

The measures are not confined to trucks alone, and at times the intricate processes by which revenue is extorted approach the ridiculous. A Californian visiting in Detroit was asked by a friend in California to drive a new car back for him. The hapless tourist who unfortunately admitted to state officials that he did not own the car was forced to pay over $48 in fees en route. In Arizona the fee was only $3, but in Nevada it was $7.50. The 374-mile trip across New Mexico cost $37.60: $5.60 for a carrier's registration permit, $7 for New Mexico license plates, and $25 for a state corporation commission permit.[9]

(3) Sometimes, in its proprietary or business capacity, the state raises interstate barriers by forbidding governmental employment of nonresidents or purchase of goods from out-of-state merchants. Such a procedure has only an illusory advantage which frequently handicaps the state because it cannot go beyond its borders to secure superior personnel or better prices.

(4) The so-called "Green River" ordinances which forbid uninvited calls on private residences by peddlers, itinerant merchants, and transient vendors are municipal devices primarily intended to protect local merchants against outside competition.[10] In other communities the same effect has been achieved by demanding prohibitively high bonding, or the posting of exorbitant surety deposits, or the acquisition

[9]Anon., *Highway Highlights* (February 29, 1940) 3.

[10]F. E. Melder, *Trade Barriers and Peddlers.* (Chicago: The Council of State Governments, 1939) 2.

of expensive licenses before an itinerant merchant can operate. In some cities and towns the itinerant vendor may be required to furnish an identification card, to secure local character references, or to keep so complex a record of purchases and sales as to discourage any but the most hardy.[11]

(5) Regulatory activities, legitimate in themselves, have been twisted so as to achieve the effect of impeding interstate trade. For instance, in 1932, New York imposed a quarantine against the importation of any dairy cattle into the state—even if free from Bang's disease—from herds which had not on three occasions during the previous year been certified as completely free from Bang's disease. It is questionable whether a single herd within New York State met the requirement—but the quarantine effectively secured the local market for the local dairies.[12] The biological value of California's special quarantines on citrus fruit—although not inspected—is open to mild question. Many times special quarantines against definite pests are economic rather than biological in purpose. For instance, shipments from certain areas in which the pest is not to be found may be excluded from the controlling state, or shipments may be excluded even though the pest is already entrenched in the controlling state and no active program of eradication is under way.[13] Moreover, the provisions for discriminatory license fees, surety bonds, special permits, and the like, may be fiscally advantageous to a state, but their utility in the prevention or control of plant and animal disease is questionable.[14]

(6) Use and excise taxes can also be potent protective weapons. Use taxes are generally a substitute for a state

[11]*Ibid.*, p. 3.

[12]F. E. Melder, *Agricultural Quarantines as Trade Barriers.* (Chicago: The Council of State Governments, 1939) 1–2.

[13]*Ibid.*, p. 4.

[14]*Ibid.*, pp. 4–7.

sales tax on articles purchased out of the state. When no offset for sales taxes imposed in the state of origin is provided, the purchase of out-of-state commodities is discouraged by the additional cost of the double tax load. An excise tax on margarine may be designed either to shut the market to cocoanut oil and other food oils not produced in that state or, in dairy states, to shut the market to margarine entirely. Entirely aside from the political dangers involved, this latter type of legislation may have other undesirable effects. Consumers who are financially unable to purchase butter are unduly penalized when substitutes are prohibited. Even cities have adopted this "protective" device.

Competitive Bidding

Closely related to the problem of interstate evasion discussed in an earlier section is that of interarea bidding by wealthy individuals or corporations. More than a dozen years ago the writer, driving through one of the Southern states, noted numerous large billboards "advertising" the fact that the state had neither income nor inheritance taxes. Every reader is familiar with the extensive advertising of recreational facilities by both state and local governments. Most of these attempts to secure either the tourist trade or the residence of individuals are not of great governmental significance. Neither, indeed, is the bulk of the public advertising done by governmental units even when designed to attract industries as well as individuals. On the whole, then, although sums ranging from ten thousand to a half million dollars are annually spent on advertising by the states,[15] this aspect of the problem deserves little attention.

Far more serious is the tendency, chiefly displayed by cities and towns but also by some states, to offer as induce-

[15] *Advertising by the States.* (Chicago: The Council of State Governments, 1940.)

ments to industrial migration entire freedom from—or greatly reduced—taxes, as well as free factory sites, free power, guarantees against labor trouble and similar extraordinary privileges. The report of the Massachusetts Commission on Interstate Cooperation cited above contains several examples of this type of "competitive bidding." A town in New Hampshire offered to dismantle, move, and set up all machinery and equipment of a Lynn (Massachusetts) shoe factory. In addition it offered a building of twenty-four thousand square feet rent-free and a guarantee of $5,000 against labor troubles. Even so large a town as Nashua, New Hampshire, offered two years' free rent, tax exemption for ten years, and moving expenses to Lynn manufacturers. Workers on the town welfare rolls were usually employed for moving purposes. As inducements to factories to migrate a Maine town included free rent, free power, heat, light and lumber, and a complete instructional program to fit persons on their welfare rolls to take over the various jobs in the factories.

On the state level the bidding is necessarily of a somewhat more generalized type. New Jersey, Nebraska, and Indiana stress their lack of income taxes and other taxes. However, Mississippi has by constitutional amendment authorized its municipalities to "acquire land and construct buildings for worth-while plants . . . seeking healthy decentralized units in small and friendly towns."[16]

Such activities—however undesirable—can readily be understood. A community whose members feel economically exploited because of its lack of industries, or a community whose major industries have closed their doors and whose unemployment problem is acute, may feel that efforts to secure the migration of successful business are a legitimate aspect of social planning. On any but a purely local basis,

[16]All examples from report of Massachusetts Commission, *op. cit.* (above, n. 2), pp. 66–78.

however, the results are far from desirable. The migrating firms leave behind them unemployment, higher welfare costs, higher taxes on the businesses and individuals who remain, more bankruptcies, and the full impact of the downward economic cycle. But, in addition, even the local benefits are questionable, since the practical subsidization of certain companies tends to handicap others which are carrying their fair share of the community costs. Moreover, the small town which has attracted industries through tax exemption and other governmental concessions has more difficulty in maintaining adequate educational, health, and welfare programs than one in which all parts of the community are contributing to the revenue. The immediate benefits of increased real-estate activity are more than counterbalanced in the long run by the decrease in social standards.

The Failure as Experimental Laboratories

We have thus far dealt with what may be termed positive "evils" of the present pattern of decentralization. But the system is subject to criticism on another score: its failure to achieve the very values which it is supposed to preserve.

For instance, in spite of the examples we have noted in the previous chapter, state and local units do not seem generally to have functioned as satisfactory experimental laboratories. It is true that new devices and programs are often tried out in restricted areas, but the utility of such "experiments" is questionable if no scientific recording or evaluation of results occurs and if there is no consistent effort to transmit to other units the conclusions drawn from the experiment. Sometimes the blame is to be laid on the experimenting unit when it fails to make available in practical form the results of its experience. More frequently indifference, venality, or incapacity on the part of officials in other communities is responsible for the relatively small

degree to which intelligent use of the existing data is made.

Thoughtless *imitation* does often take place—but this is by no means desirable and at times may be actually deleterious. A system may be taken over *in toto,* bad and good details together; the idea but not the valuable essentials of a good plan may be taken over; or a good plan may be transferred in entirety into an environment so radically different that adjustments to local needs should have been made. State civil service systems and state budget agencies have recently become more common, but all too few of them have profited by the lessons of experience in jurisdictions where they were first tried out. Most states now have workmen's compensation laws, but less that half a dozen have followed the successful pattern of legislative and administrative practices worked out in New York and Wisconsin. Where no careful comparative studies exist it might be contended that extensive research activities are outside the practicable field of untrained legislators or busy officials, but this excuse cannot apply to cases where such studies are readily available. For instance, there is no longer any question that psychological analysis of prisoners, adequate but humane disciplinary schemes, planned work, and decent surroundings should be part of any successful prison program. Yet more than half our state penal institutions ignore these fundamental principles.

It should be added that frequently—especially on the local level—the situation is not due to the venality, indifference, or inability of the officeholders. It is due to the fact that competent, honest men who have had no previous opportunity or occasion to study governmental problems are elected for relatively short terms. Before their initial ignorance can be remedied to any considerable extent, their term of office expires. For example, in small university cities faculty members are often elected to the city council. Yet these men, despite their acknowledged competence in their

own fields of activity, often lack acquaintance with the most elementary principles of successful municipal administration in fire, health, police, assessment, and other fields, as their legislative and administrative record all too frequently demonstrates. And this is true not of one community or profession or type of business experience but of many—if indeed not all. This difficulty points sharply the problem of conflicting values. In terms of widespread, practical training in self-government the participation of large numbers of citizens is desirable. Yet inevitably this constant turnover in government personnel has deleterious effects upon efficiency. Men do not elaborately educate themselves for an office which will be held for a very short time, and the informal "in-service" training which comes from mere experience in office may just begin to show its desirable effects when the term expires. The proper solution cannot be hastily reached, but the problem should be squarely faced.

Administrative Weakness of States

We have noted in the preceding chapter that proponents of decentralization insist that it increases administrative efficiency. Experience, especially on the state level, does not seem to substantiate this conclusion. With the exception of such cases as those noted on page 13, state governments are inferior administratively to the federal government. Two thirds of the states lack genuine merit systems for selection of personnel, and only three or four have salary levels sufficiently high to attract competent administrative or professional staffs. Progressive governmental units have long recognized that the general electorate is ill qualified to judge legal, financial, or technical administrative performance; yet in most states the chief counsel (the attorney general), the chief clerk (the secretary of state), the treasurer and other financial officers are still elective. Moreover, those

departments which in every state show uniformly high administrative efficiency are generally those in which the federal government, through grants-in-aid, is exerting some pressure for the maintenance of standards.

Legislative Weakness of States and Local Units

While theoretically local legislatures should be most sensitive to local needs, best acquainted with local circumstances, and best able to solve local problems, that ideal presupposes certain conditions lacking in many of the states. In an age of increasingly complex economic factors and of generally increasing governmental activity, a body of men who are satisfactorily to meet the varying problems of society must possess more than good intentions. They must possess knowledge as well. They should receive salaries commensurate with the importance of their position. Yet the state legislatures—constitutionally entrusted with the most important and extensive of legislative responsibility and power—are on the whole ill equipped for intelligent consideration of the vital concerns of their area. There are so many members that individuals in the busy, short session are unable to attract public attention to themselves. Individual legislators rarely have either the time or the fiscal resources for adequate research on even a few bills, and only a handful of states have set up fully satisfactory research bureaus to which the legislators can turn for assistance. Nor is this all: there is no attempt to remedy the initial difficulty by prolonged discussion. Instead, the most intricate measures—vitally affecting the financial, administrative, social, and economic policies of the state—are rushed through in brief biennial sessions. In marked contrast is the federal situation where exhaustive hearing and studies frequently precede the passage of important bills. Proponents of states' rights might pause to consider whether the increase of federal ac-

Chapter IV

The Present Pattern of Federal and State Powers

ALTHOUGH the ideal of the federal system is a dominating force in the national consciousness, other, vaguer, but still powerful ideals and loyalties pull in opposite directions. The average citizen would find it difficult to formulate just what he expects of government, but in a general way he feels that government should be "limited" though not so limited as to preclude any program which seems generally desirable for the best interests of all; that it should not unduly hamper the business activities which are basic to our prosperity, but that it should have some power to control business in the interests of the consumer and the worker; that traditional local loyalties are important, but that somehow mechanisms for dealing with national problems must be worked out with the least possible damage to these loyalties. Frequently, it must be admitted, the citizen would like to have his cake and eat it too—he would like simultaneously all the advantages and none of the disadvantages of centralization and decentralization. It is probable that this essential conflict in the American mind accounts for the rather haphazard and sometimes inconsistent development of the new pattern we are about to describe. It is interesting to compare the public attitude toward present-day shifts in function with the attitude toward earlier expansion of federal activity as noted by Bryce: "Generally the people have approved of such action

by the President or Congress as has seemed justified by the needs of the time, even though it may have gone beyond the letter of the Constitution; generally they have approved the conduct of the courts whose legal interpretation has upheld such legislative or executive action. Public opinion sanctioned the purchase of Louisiana, and the still bolder action of the executive in the Secession War. It approved the Missouri Compromise of 1820, which the Supreme Court thirty-seven years afterwards declared to have been in excess of the powers of Congress."[1]

Although, as will be more fully discussed later, the states have not become so atrophied in the past ten or fifteen years as alarmists indicate, it is clear that the federal government is becoming an increasingly important factor in the total governmental picture. If we disregard for the moment the distinction between its direct and its co-operative projects, we find new or greatly extended activity in the following fields:

(1) Social security—including public assistance, unemployment compensation, child welfare, old-age insurance, and various public health programs
(2) Promotion of agriculture
(3) Conservation of national resources
(4) Public works—including both those designed primarily to facilitate construction of desirable works and those designed primarily to alleviate unemployment
(5) Housing of the population—through direct construction, loans to local authorities, and underwriting of building activities
(6) Public utility enterprises
(7) Promotion of private business
(8) Regulation of labor conditions
(9) Regulation of business
(10) Law enforcement
(11) Specialized education
(12) General credit and insurance

[1]Bryce, *op. cit.* (Chap. I, n. 3), I, 376.

It will be helpful to classify these functions into purely federal, partially co-operative, and fundamentally co-operative. The line between these classes is often difficult to draw, and in many cases rigid distinctions would convey an erroneous picture of the actual situation. In the following chapters, where a more detailed analysis is involved, a different grouping has seemed desirable. Here, however, an over-all view of the nature and extent of federal expansion as related to state governments will better suit our purposes.

Purely Federal Activities

The credit extended to agriculture, in all its aspects, is a purely federal project. The numerous federal agricultural credit banks which were in existence prior to the depression have been grouped by the New Deal into the Farm Credit Administration recently brought under the Department of Agriculture. New services have also been instituted. For instance, the Farm Security Administration now issues loans to farmers whose "credit rating" is too low to entitle them to fiscal assistance from other governmental sources. Under certain circumstances it also makes grants to impoverished farmers and co-operative associations. The Rural Electrification Administration is seeking to raise rural living standards through loans to rural co-operative associations which furnish power to all who need it and not—as some private power companies have done—"skimming the cream" by selling only to the areas where population or wealth is sufficiently concentrated to guarantee a profit. The Commodity Credit Corporation makes loans on various types of commodities. The Surplus Commodities Corporation has recently embarked upon a program to make possible the distribution of these surplus commodities to relief clients.[2]

[2]A full description of these activities will be found in Donald C. Blaisdell, *Government and Agriculture* (this series).

Direct federal activity is also important in the field of conservation. National parks have increased in number during the past decade, and the extent to which they are used has shown a remarkable rise. The Forest Service has consistently expanded until today it administers more than one tenth of the area of the United States. Many of the great construction projects undertaken by the War Department and the Reclamation Service are at least partially conservatory in nature.

Although, on the whole, those activities of the Departments of State, Agriculture, and Commerce, and of the Tariff Commission which may be described as general promotion of private business have not been materially expanded recently, certain specific measures in this field are important. The Hull reciprocal tariff program has been of more long-run value to business than the "promotional" schemes of the 1920's. The newly established United States Maritime Commission is pledged to promote American shipping in foreign commerce. The Reconstruction Finance Corporation continues to expand its function of lending to businesses. In these and other similar cases, of course, there is some contact with state activity but its extent is not significant.

The recently expanded regulatory activities are also almost exclusively federal. The work of the Securities and Exchange Commission is very slightly connected with the regulatory function of the states, and the revitalized Federal Trade Commission is likewise practically independent of local activity.

Of the extensive social security program, however, only one aspect—the old-age and survivors' annuity program—is purely federal. In contrast, far-reaching programs in three "categories" of public assistance, in unemployment compensation, and in public employment offices are conducted in co-operation with states and often with localities as well.

The Department of Labor, the National Labor Relations Board, and certain smaller agencies regulate and investigate labor conditions. Most important of the new aspects of the labor program are the wages-and-hours law and the guarantee of the right to organize. Although these federal agencies are interested in the labor laws of the states, the administration of their functions involves little formal co-operation with other levels of government.

In its extensive and various projects for encouraging home ownership, the federal government operates independently unless state enabling legislation is necessary. Even then the actual contact is brief and administratively insignificant.

Partially Co-operative Functions

Many of the new federal activities involve partial co-operation with the states. Included in this group are those in which the contacts are informal or—if statutory—of relatively slight importance. Since the co-operation varies both in degree and in type, this class has a somewhat heterogeneous aspect.

Although much of the work of the Federal Bureau of Investigation is wholly independent, some services are rendered to state—and local—police forces. Selected state police officers are given the opportunity to attend the F.B.I. training school; the bureau's laboratory facilities and finger-print service are available to state forces; and federal pursuit of criminals across state lines greatly aids local law enforcement.

The bank-deposit insurance program involves fairly frequent and close co-operation between the Federal Deposit Insurance Commission and the state banking agencies. The two separate examinations of banks by state and by federal officers provide many opportunities for mutual assistance. Inconvenient as this double examination may be for the

member banks, some people feel the resulting increased security of the public's funds is a compensating factor.

For many years informally—and, more recently, with statutory authorization—the Interstate Commerce Commission has held joint hearings and discussions with state utility commissions on railroad regulation cases. The Motor Carrier Act of 1935, which brought motor carriers under the control of the same commission, provided that, in cases involving carriers operating in more than three states, the commission might establish joint boards in which each interested state should be represented.[a] These joint boards are to have the same powers of inquiry and the same treatment of their recommendations that an Interstate Commerce Commission examiner acting alone would have. The Federal Power Commission and the Communications Commission have been authorized to create similar boards under certain circumstances. While experience has not yet been sufficient, except in railway cases, to warrant any generalized evaluation of this technique, the boards would seem to furnish a desirable opportunity for co-operative approach to interstate problems.

Although no regularized medium of co-operation has been provided, the National Resources Planning Board (and its predecessors—the National Resources Committee, the National Resources Board, and the National Planning Board) has worked closely with state planning agencies—furnishing consultants and extending other services. In fact, it could be said that the state planning boards created during the past eight years were inspired by the National Resources Board and to some extent were designed as co-operative

[a]This particular expansion of federal jurisdiction was strongly opposed by the National Association of Railroad and Utility Commissioners (composed chiefly of state officials), which desired to keep within the state the regulation of interstate motor vehicles. The present provision is a compromise between their position and that of advocates of complete federal control.

units. The Resources Board has furnished the bulk of the financial support for the various state boards at different times.

The Tennessee Valley Authority has consistently co-operated with the seven states whose territories are included in the gigantic flood-control, agricultural, and power-development project.

In the course of its expanded work with fisheries, birds, public recreational areas (other than the purely national parks mentioned above), and mines, the Department of the Interior has considerable contact with state conservation agencies. Most typical of these co-operative activities are the joint research and experimental projects, but occasionally land and other facilities are exchanged. Frequently, too, personnel is used for joint federal-state purposes, especially in the enforcement of conservation laws.

Both the work relief program conducted by the Work Projects Administration and the enterprises in heavier public works subsidized by the Public Works Administration involve extensive contractual and other co-operative arrangements with state and local units. Various permissive and enabling state legislation is often necessary where a local agency sponsors a public works project or receives a P.W.A. loan. In these instances whether the sponsor is a state or local agency a formal contract with P.W.A. is necessary.

Although the nature of most federal educational activities places them in the category of "predominantly co-operative functions," a few, especially the so-called "Emergency Education Activities," do seem to be included in the partially co-operative group. The W.P.A. educational program, although in some states almost completely identified with the state department of education, in others is based merely on co-operative agreement, and in some is almost totally separated from the state department.

Predominantly Co-operative Functions

Probably the social security programs are the most important of the new governmental activities operated through co-operation with the states. The employment-service system, the unemployment-compensation system, old-age assistance, aid to the blind, and aid to dependent children are conducted by the Social Security Board under a formal plan of grants which devolves most of the actual administration upon the states and local communities. The child-welfare program sponsored by the Children's Bureau in the Department of Labor, and the public health activities sponsored by the Children's Bureau and by the Public Health Service in the Federal Security Agency are likewise conducted upon a predominantly co-operative basis.

In the field of public works two functions—the new one of housing and the older one of road building—are carried out primarily through grants to states and local units.

Although general education remains largely a state function, the central government has shown an increasing interest in certain aspects—particularly in vocational and agricultural education. It is true that some of the recent emergency education programs are only very loosely co-operative and it is also true that in some instances, especially in the field of adult education, the federal government has dealt directly with local units. By and large, however, the substantial amount of federal aid to education is channeled through the state governments.

Even in some of its regulatory functions the federal government at times works in close co-operation with the states. Conservation of petroleum resources is being attempted through the joint mechanism of an interstate compact controlling oil production and a federal law forbidding interstate shipment of amounts in excess of state-stipulated quotas.

Conclusion

These, then, in rough outline are the tentacles of the federal octopus of which we have heard so much. There is certainly no doubt that the federal-state pattern has changed radically since 1789 both in the extension of new activities and in the development of closer relationships with the state governments. The original pattern could not withstand the impact of the conditions described in Chapter III. Probably the two major factors in the shift were the fiscal superiority of the central unit and the inability of the states to solve nation-wide problems or, indeed, even to solve local problems in the face of opposition or indifference. The result of the first situation has been the expansion of federal lending, spending, and insurance programs. The result of the second has been the expansion of federal regulatory programs.

In the following chapters an attempt will be made to appraise the new arrangements. Were the changes necessary —did they constitute the sole possible solution of difficulties? Were they "constitutional"—did they violate the basic principles of our system? And—whatever the answer to these first questions—were they justifiable in so far as the advantages heavily outweighed the disadvantages? These are the criteria by which we may evaluate the individual devices and programs.

Bryce's comments on the issue of constitutionality are still pertinent:

> Whenever there has been a serious party conflict, it has been in reality a conflict over some living and practical issue and only in form a debate upon canons of legal interpretation. . . . When it was proposed to exert some power of Congress, as for instance, to charter a national bank, to grant money for internal improvements, to enact a protective tariff, the opponents of these schemes could plausibly argue, and therefore, of course, did argue, that they were unconstitutional. . . . But as regards most

questions, and certainly as regards the great majority of the party combatants, men did not attack or defend a proposal because they held it legally sound or unsound on the true construction of the Constitution, but alleged it to be constitutionally wrong or right because they thought the welfare of the country, or at least their party interests, to be involved. . . . Legal issues are apt to dwarf and obscure the more substantially important issues of principle and policy.[4]

In the following chapters an effort will be made to employ not the criteria of legal construction of the Constitution which Bryce has rightly criticized, but rather the criteria of a functioning political and economic system.

[4]Bryce, *op. cit.* (Chap. I, *n.* 3), I, 377, 379.

Chapter V

Direct Federal Activities

Regulatory Functions

PROBABLY most outstanding and significant of the new federal measures and the agencies set up to implement them during the past eight years are those of a regulatory nature: the National Recovery Administration with its industrial codes; the Securities and Exchange Commission designed to supervise security sales and security markets; the revised and improved Food and Drugs Act, coupled with the increased power granted the Federal Trade Commission to deal with commercial deception; the Fair Labor Standards Act, guaranteeing a floor under wages and a ceiling over hours; the National Labor Relations Act, securing to labor the right to organize; the Parker Act providing for the inclusion of interstate motor vehicle carriers under the control of the Interstate Commerce Commission; the Federal Communications Commission Act establishing the commission for the regulation of radio and the supervision of wire communication; the Civil Aeronautics Authority Act granting extensive control over the aviation industry; the United States Maritime Commission Act giving the commission power to subsidize—and thus derivatively to regulate—much of American shipping to foreign ports; and the considerable extension of the regulatory powers of the Federal Power Commission

which now cover interstate transmission of electric energy, interstate shipment of natural gas, and certain of the federal hydroelectric power plants.

It is not surprising that so imposing a list should give rise to the complaint that federal powers are getting "out of bounds." This objection, however, should be analyzed thoroughly before any attempt to evaluate its validity can be made. The new federal activities may be attacked as "unconstitutional" or they may be attacked as "unwise." Ideally we should perhaps be able to separate the two charges completely. This separation is rarely made, and it must be admitted that in many cases it is, to any but the most legalistic mind, practically impossible. However, some attempt at clarification may be useful.

Of the programs and agencies listed at the beginning of the chapter all are fairly strictly limited to foreign, to maritime, or to interstate affairs—fields traditionally and constitutionally within federal jurisdiction. The Securities and Exchange Commission, the Federal Communications Commission, the Civil Aeronautics Authority, and the United States Maritime Commission deal with problems which the states have never made substantial efforts to attack. State regulation of the transfer of power or natural gas across state lines is practically precluded by our Constitution. The most controversial of the new powers are those which extend to matters which are in actual practice extremely difficult, even if not *theoretically* impossible, for the states to control. Among these are the protection of labor's right to organize, the enforcement of wage and hour standards, the regulation of the sale of foods and drugs.

It should be repeated, then, that nominally all these powers apply to enterprises whose operations cross state borders. Their intrastate effects can fairly be called incidental, but upon these effects rest such constitutional challenges as that of the states to the scope of the Federal Power Commission.

In no two of these new regulatory programs are all the factors the same. Different criticisms are leveled at them—different defenses are applicable. It is obviously impossible, however, to analyze each of the agencies and its work and to evaluate it in terms of the criteria mentioned in earlier chapters. Instead, the history of one of the more controversial agencies—the N.R.A.—will be briefly traced, and its values and dangers noted.

In 1933 a gigantic structure based upon the self-regulation of business was authorized by the National Industrial Recovery Act. It will be remembered that business was allowed to draw up for the various industries codes which in varying degrees violated the Sherman Antitrust Law. Certain socially desirable policies—higher wages and to some extent the right of labor to organize—were in turn guaranteed by industry.

When the Supreme Court declared the N.R.A. codes unconstitutional,[1] it cited two grounds: (1) that the statute setting them up was an unconstitutional delegation of legislative power; and (2) that the codes regulated intrastate commerce. The first ground is relatively unimportant for our purposes. Technical deficiencies in legislation may impede desirable action, but they can be easily remedied and are not fundamental. It is with the court's second point that we are concerned. Government counsel contended that in so far as the codes regulated intrastate commerce they did so because of the close and inevitable relation between interstate and intrastate commerce, and to substantiate this contention cited the decision handed down by the Supreme Court in 1914 in the Shreveport case which sustained federal power to regulate intrastate rates which affect interstate rates.[2] But the Supreme Court rejected this precedent as involving an essentially different case—one in which the effect on inter-

[1] *Schechter, A. L. A. Poultry Corporation* v. *United States,* 295 U.S. (1935) 495.

[2] *Houston, E. and W. Texas Ry. Co.* v. *United States,* 234 U.S. (1914) 342.

state commerce was *direct*—and stated: "If the commerce clause were construed to reach all enterprises and transactions which could be said to have an indirect effect upon interstate commerce, the federal authority would embrace practically all the activities of the people and the authority of the state over its domestic concerns would exist only by sufferance of the Federal Government."

Although the Supreme Court more recently has tended toward a broader interpretation of "interstate commerce," in this particular case it decided against the constitutionality of the measure. In view of such an authoritative pronouncement, it remains for us only to analyze the wisdom of the N.R.A. program as a part of our federal system. It is certainly true that if the values of administrative decentralization and adaptation to local needs are primary, nation-wide codes uniformly applied are not desirable. The Brookings study of the N.R.A. came to the conclusion that its efforts towards *decentralized* administration were ineffective.[8] Experimentation was slighted and attempted adaptation to local circumstances was clumsy and unsatisfactory. The argument that administrative decentralization continued to exist—on the basis of economic industrial units—is not very satisfying. The coexistence of two bases of division—economic and political—is impractical unless one is definitely subordinated to the other. Certainly problems of co-ordination would be enormously multiplied by such a dual system. It is also true that the N.R.A. carried with it—potentially at least—a vast augmentation of federal power which many may have regarded as ill advised. General Hugh Johnson, N.R.A. administrator, in his vigorous way, spoke many times of "cracking down" on code violators. Since administrators may not always be scrupulous, such concentration of economic and political power—whether or not constitutional—may be unwise.

[8]Leverett Lyon and Others, *The National Recovery Administration.* (Washington, D.C.: The Brookings Institution, 1935) Chaps. VIII–X.

But there is another side to the question which deserves attention. In Chapter III it was observed that decentralization fails when operations must be large scale. The declining business cycle—lower sales, lower prices, lower wages—became a cumulative force in the American economy. That economy had become, in very large part, nation wide in extent. There still remained, of course, some strictly intrastate businesses, but even these were frequently dependent on out-of-state sources for materials, or were otherwise involved in the intricate network of the American industrial pattern. The depression called for a concerted nation-wide attack on economic problems. No state or group of states could effectively cope with the difficulties. An inflexibly decentralized system is inherently incapable of providing the mechanisms by which *national* emergencies can be vigorously, quickly, and effectively met. This fact was admitted by the statesmen of 1787, and it was for this reason that they insisted on giving to the central government unlimited powers in connection with all situations which, at that period, they conceived of as actually or potentially "national" in scope. During the past century and a half the social and industrial pattern has changed greatly, and certain economic crises have become as delocalized in incidence as military defense or diplomatic negotiation. It may be unconstitutional—it may be unwise—to extend federal powers. But if this is the decision we reach, we must realize that in so deciding we leave a large group of pressing evils which no governmental agency is, in practice, able to rectify.

It was noted in Chapter IV that it is a part of our basic philosophy that somewhere in our political structure the power to meet all needs shall exist. Immediately after the decision on the N.I.R.A.—the Schechter case—a constitutional amendment was proposed which would permit Congress to regulate business. Congress itself, however, preferred to try another approach. It passed a number of specific

acts, clearly limited to interstate commerce, which would, it was hoped, be held constitutional. Among these were many of the regulatory measures listed at the beginning of the chapter. That the Supreme Court itself is tending to a broader view of interstate commerce is evidenced by a recent decision upholding a National Labor Relations Board order. In the course of the decision Chief Justice Hughes said:

> Giving full weight to respondent's contention with respect to a break in the complete continuity of the "stream of commerce" by reason of respondent's manufacturing operations, the fact remains that the stoppage of those operations by industrial strife would have a most serious effect upon interstate commerce. In view of respondent's far-flung activities, it is idle to say that the effect would be indirect or remote. It is obvious that it would be immediate and might be catastrophic. We are asked to shut our eyes to the plainest facts of our national life and to deal with the question of direct and indirect effects in an intellectual vacuum.[4]

As a matter of fact, it can be questioned whether the constitutional separation of jurisdiction over interstate commerce from that over intrastate commerce was a fortunate one. The national economic system is largely unitary, and much of the controversy now revolving around the question of whether a given power is constitutionally state or federal might better be devoted to the question of its desirability. The experience of such federal systems as Canada and Australia—which to some extent grant the central government regulatory powers over business both inter- and intrastate—seems to indicate that much of our legalistic confusion is avoided while the constituent units still serve the purposes of decentralization. Australia gives to the central government, in addition to control over interstate commerce, jurisdiction over state banking and state insurance when these extend

[4] *National Labor Relations Board* v. *Jones and Laughlin Steel Corporation*, 301 U.S. (1937) 1.

beyond state boundaries, and over "trading and financial corporations."[5] The powers of the Dominion Parliament in Canada extend unequivocally "to all matters coming within . . . the regulation of trade and commerce."[6]

On the whole there is little reason to believe that the values of decentralization which we wish to preserve are endangered by the group of new federal regulatory activities. Restricted to interstate concerns, as we shall see in Chapter VIII, they not only do not prevent—but in actual practice have stimulated—state activity in the same fields. Thus the states are not stripped of power nor are citizens in any way deprived of the educational values of local participation in many of the programs. Since the demise of N.R.A., the newer agencies have been more carefully administered and have been conscious of the values of experimentation and adaptation to local needs.

It must be remembered that states are constitutionally prohibited from taking legislative action on matters pertaining to interstate commerce. In many cases a purely intrastate regulation is either ineffective or so locally discriminatory as to be unpopular. In spite of the still considerable controversy over the desirable extent of governmental control, few Americans would feel that regulatory action in a certain field, once adjudged necessary to the public interest, should be precluded because of legalistic difficulties. Yet to reject, on theoretical grounds, federal intervention in cases where a combination of constitutional limitation and practical difficulties makes state regulation meaningless, is to close off entirely certain private activities as essentially untouchable.

The danger of excessive federal power is clearly great if the regulatory agencies are permitted to exercise arbitrary power against individuals. Development of fair administra-

[5]Constitution of the Commonwealth of Australia, Part V, Sec. 51, i, xiii, xiv, xx.

[6]Constitution of the Dominion of Canada, Part VI, Sec. 91–(2).

tive procedures in the federal government would seem the best precaution against this danger.

Federal Lending Activities

When a situation arises in which the level of government possessing the most money and the power to coin money has severely limited powers and the level charged with the most duties possesses the least money, some type of adjustment is inevitable. Accordingly, during the past eight years the federal government has proceeded with an extensive program of loans, direct expenditures, and grants.

Considering first the lending activities, we find that under President Hoover the Reconstruction Finance Corporation was established to prevent the epidemic of bank and industrial failures which had paralyzed the business structure in previous major depressions. This agency continues to serve its original purpose, but its activities have been expanded under the New Deal. It is now empowered to make loans to public agencies, to drainage and irrigation districts, to farmers' co-operatives, to public school authorities, to state insurance funds and, more recently, to corporations concerned with defense construction. In addition, a subsidiary, the R.F.C. Mortgage Company, makes direct loans in the housing field. Several federal agencies are financing various types of home loans: the Federal Home Loan Bank System, the Home Owners' Loan Corporation, the Federal Savings and Loan System, and the Federal Savings and Loan Mortgage Corporation are advancing credit in order to stimulate home ownership, construction, and repairs. The Electric Farm and Home Authority finances the purchase of electrical appliances and the installation of wiring; and the Federal Housing Administration is likewise engaged, but more remotely, in home loans since it insures lending institutions against loss on mortgages.

Such activities on the part of the national government seem to utilize its obvious fiscal superiority without violating the principle of political decentralization. Certainly no infringement on existing state powers is involved, since governmental credit for nonagricultural private enterprise was almost unheard of prior to 1932. The state and local governments themselves do not seem to resent this expansion of federal activity. Where state enabling legislation was essential it has been readily secured, and many state and local governments have not hesitated to avail themselves directly of federal loans. Moreover, effective administrative decentralization and adaptation to local needs are more easily secured in the field of credit. Finally, the very nature of a credit agency implies the necessity of spreading risks over a wide area if disaster is to be avoided.

That there are some potential dangers in the field of federal lending cannot be denied. For instance, by encouraging construction outside of city limits, it would be possible for the Federal Housing Administration practically to destroy the tax resources of certain municipalities. By and large, the F.H.A. has shown no tendency to such arbitrary political action. Its principal weakness, as we shall note later, has been in its failure to plan co-operatively with other agencies.

People who, on general principles, fear any great concentration of power might justifiably consider the Reconstruction Finance Corporation dangerous. It cannot be denied that an agency which can at will rescue—or fail to rescue—large fiscal institutions must inevitably possess great influence. The question, however, is not whether the central government should wield such controls but whether any government should, since it is probable that most of our state governments—even if subsidized by federal funds—would be much less capable of efficient and impartial action in this field.

Direct Federal Expenditures

Although the regulatory and credit activities discussed above are probably of more permanent governmental significance, the new federal "spending programs" have captured more general popular attention. In a book entitled *Congress as Santa Claus* and published before the advent of the New Deal,[7] Charles Warren attacked the tendency of Congress even then to appropriate funds for purposes other than those specified in the Constitution. Nevertheless the full potentialities of the federal expenditure as a means for promoting specific policies were first tried on a large scale during the first two Roosevelt administrations.

The original Agricultural Adjustment Act of 1933, one of the most extensive and most criticized of these schemes, levied a processing tax on the manufacture of agricultural commodities, the proceeds of which were to be used to subsidize curtailment of agricultural production on a nation-wide scale. The goal was the stabilization at reasonably high levels of the prices of farm products. No attempt to coerce farmers into curtailment was involved; the technique was to make it financially advantageous—or at least not financially disastrous—to cut down crop surpluses.

In a decision of considerable political significance the Supreme Court declared the act unconstitutional.[8] While admitting congressional power to tax and to spend money for the general welfare, the Court maintained that these powers could not be exercised in a way which would invade the rights reserved to the states under the Tenth Amendment, and asserted that control of agricultural production was one of these reserved powers.

[7]Charles Warren, *Congress as Santa Claus—or National Donations and the General Welfare Clause of the Constitution.* (Charlottesville, Va.: The Michie Company, 1932.)

[8]*United States* v. *Butler*, 297 U.S. (1936) 1.

What the Court refused to recognize was the existence of an "economics" of federalism as well as a "politics" of federalism. In actual practice individual states were powerless to control agricultural production. Interstate competition and interstate evasion would make any but national control a farce—and a costly farce to the experimenting units. Here, as in the decisions on the child-labor legislation, the Court was in effect setting governmental boundaries which left extensive social and economic problems outside the scope of any governmental control.

In spite of this decision the federal program of agricultural aid went forward in another form. Practically the same crop reduction plan is followed by the present Agricultural Adjustment Administration, but subsidies are paid from the general treasury funds rather than from the specific taxes originally employed. In addition, soil conservation is being encouraged through subsidized planting of soil-conserving crops. Acreage allotments and quotas for certain commodities may be put into effect if a referendum shows that a specified majority of the producers affected approve. Compensatory payments for unused acreage are provided.

All these—and other—agricultural programs are administered "through" state and county committees, but the administrative machinery is federally designed and the personnel federally selected. The Department of Agriculture also exerts great influence through numerous advisory activities—most of which are of predepression origin—but these are usually connected with state-operated extension services—an example of the grant device to be discussed in Chapter VI.

It seems likely that all these later developments of the agricultural program will meet the test of constitutionality; it also seems that, on the whole, the advantages of action on a national scale far outweigh the loss in localism. Many of the department's programs are seriously trying to secure the co-operative activity of local citizen groups. For instance, the

projects of both the soil-conservation and county land-use planning projects are grounded in local organizations which will be more fully discussed in Chapter X. In this way adaptation to the different needs of various areas, education of large portions of the citizenry, and some measure of administrative decentralization are facilitated. Moreover, extensive experimentation is under way. At the same time it must be admitted that the federally devised program has not always fitted—or been fitted to—local circumstances.

Among the first group is the decentralized structure of the Farm Credit Administration. The federal land bank, the federal intermediate credit bank, the production credit corporation, and the bank for co-operatives in each of the twelve federal districts are all under the control of the same district board of directors. On this board are seven members—four appointed by the F.C.A. and three elected by borrowers through the various loaning agencies involved.

The W.P.A. emergency educational projects also involve the use of co-operative machinery. "Both the program and the administrative personnel of the emergency education projects in each state are approved by the state department of education, the Works Project administrator for the State, the regional WPA administrator and the national director of the section of Education and Training Projects [of W.P.A.] . . . . In every state but one the state department of education is the sponsor of the state-wide emergency education program The local superintendent of schools is the local sponsor."[9]

The permanent advisory committee for determination of hazardous occupations for minors under the Fair Labor Standards Act is another example of federal-state and private

[9] *Federal Activities in Education,* Report of the Educational Policies Commission (appointed by the National Education Association of the United States and the American Association of School Administrators). (Washington, D.C.: 1939) 93.

co-operation. Appointed by the Secretary of Labor, the committee includes representatives of the American Mutual Liability Insurance Company, the American Standards Association, the children's clinic of the New York Hospital, the C.I.O., the Wisconsin Industrial Commission, and the New York State Department of Labor.[10]

One of the most interesting of the co-operative arrangements is that worked out by the Department of Agriculture in connection with its recent county land-use planning program. It was noted above that county committees, sponsored by the Department of Agriculture and the land-grant colleges, and composed of local farmers, state and federal officials, have been set up to study local problems and develop plans. The recommendations are submitted to a state land-use committee which co-ordinates the various county suggestions into a state program and submits this to the Department of Agriculture. Thus the original proposals are locally originated, and even some over-all programs formulated in Washington may be altered or even omitted in certain counties because of local recommendations.

A somewhat different type of co-operation has been federally sponsored in the erosion-control program. Soil-conservation districts have been formed which, under state authorization, become more or less independent political units although their income is almost entirely federal. The state enabling legislation has also set up state soil-conservation committees, usually composed of heads of appropriate state agencies. This state committee has important informal organizational, educational, and co-ordinating functions, but the districts once formed are not subject to its control.[11]

It is difficult at this stage to rank according to merit the various types of co-operation we have been discussing. There

[10] *Report*, U.S. Dept. of Labor (1939) 148.

[11] *Planning for a Permanent Agriculture.* (Washington, D.C.: United States Department of Agriculture, Miscellaneous Publication 351, June 1939) 38–40.

seems especially to be some question as to the desirability of introducing a new group of governmental units of the soil-conservation district type, when multiplicity of local units is already a problem. However, the experiments in interlevel co-operation are encouraging signs of a desire to preserve local influences even in federal programs.

A second major federal activity of the 1930's is in the field of public works. This, too, has been widely criticized. The Public Works Administration has been engaged in a program of lending funds to or subsidizing large-scale public construction projects. The activities of the Works Projects Administration (formerly the Works Progress Administration) are more concerned with the amelioration of unemployment problems. In both, the projects undertaken usually have such public or quasi-public sponsors as state and local units, hospitals, colleges, and other large institutions. However, P.W.A. sponsors generally contribute a substantial proportion of the cost and maintain direct supervision of the contractually constructed project; W.P.A. sponsors, on the other hand, on the whole contribute a smaller amount of the money and exercise little supervision over the project.

Since certain specific problems of intergovernmental relationships and co-operation arising in connection with these programs will be fully discussed in Chapter VII, the chief question to be considered here is the desirability of these new activities in terms of the principles and needs of the federal system. Federal powers here need careful scrutiny by the public since they are in practice very broad and there is no practical question of their constitutionality. It is rather generally agreed that there is no effective constitutional limitation on the federal spending power.

It will be remembered that one of the greatest weaknesses of our decentralized pattern is the unequal distribution of financial resources. Grants-in-aid are not a completely effective solution to this difficulty, since the matching provisions

inevitably increase the disparities. Direct federal expenditures—administered on a truly equalizing basis—constitute one of the most effective cures. From statistics on federal public works expenditures it seems evident that funds were certainly not allotted to various states in proportion to the revenue received from those states, and there is some indication that states with smaller per capita wealth were receiving a larger proportion of funds. On the other hand, it has frequently been charged that these results were accidental—that political expediency rather than economic need dictated the allocation. It is indeed interesting—and it may be significant—that neither W.P.A. nor P.W.A has followed any single formula for apportionment between states or between sections on the basis of need. P.W.A. secured suggestions of allotment criteria from the National Planning Board but never used them.[12] The exceedingly rough state "quotas" based on population and estimated need which were worked out by the Special Board of Public Works never served as more than a check on flagrantly disproportionate allotments. If such charges are true it must be admitted that the present methods of apportionment have failed to work out a desirable scheme for financial equalization between areas of the Union. In addition, these methods exemplify the dangers of a considerable concentration of arbitrary power in Washington. That the dangers are not chimerical is shown by the recent "political" use of W.P.A. in some of the states. Although a detailed nation-wide study would be essential to a conclusive proof of this point, there is reason to believe that both P.W.A. and W.P.A. programs have suffered from lack of administrative decentralization and from inadequate adaptation to local needs The centralization of P.W.A. affairs in Washington as a means of preventing corruption has long been known. In some states this has meant that elaborate

[12]J. K. Williams, *Grants-in-Aid under Public Works Administration.* (New York: Columbia University Press, 1939) 109–19, 275.

state or local programs of public works have been disregarded where Washington disagreed. W.P.A. policies have also often proved unadaptable to local needs. In the cutover country of the northern lake states, for example, W.P.A. has supported a road-construction program which has given little help to the poorer farmers, whose real need was for assistance in developing their farm and lumber resources. It is, of course, only fair to remark that these activities—as emergency measures—served a wholesome social purpose in alleviating depression evils with which no more localized units could cope. At the same time, they do not appear to form a permanently desirable aspect of even a revised pattern of governmental powers—at least in their present form. An administration of projects is needed which gives far greater attention to local needs and adaptation to local circumstances, and far less to national political issues.

Conclusion

It is obviously difficult to generalize about the direct federal activities which have recently been undertaken. With the possible exception of the emergency W.P.A. and P.W.A. programs, this type of expansion seems to involve advantages which outweigh its dangers or disadvantages. The occupation of a no man's land of activities closely connected with the public good yet formerly untouched by governmental control, the national attack on unitary economic problems, and such fiscal equalization between the states as has occurred are all certainly desirable developments. The new agencies failed most notably in securing administrative decentralization and adaptation to local needs, but there are some indications that improved policies and mechanisms are finding a place in their programs.

It is perhaps because the questions of undue concentration of political and administrative power have received so much

attention that another important approach to new federal activity has been increasingly used. The grant-in-aid device, which will be discussed in the next chapter, strives to secure, without these disadvantages, the general goal of federal activity.

Chapter VI

Federal Grants-in-Aid

OF EQUAL importance with the new functions being independently assumed by the federal government are its activities in co-operation with the states and the local bodies. The medium of co-operation is usually a conditional grant of one sort or other. In 1938, it has been estimated, the federal government made grants of about $805 million—much of it for public works activities.[1] While this sum may not seem very large in comparison with the total 1938 federal tax collections of $6,034 million, it made a very substantial addition to state and local revenues, which were $3,857 million and $4,920 million, respectively.

Forms of Grants

Not all grants are of the same type. Most frequently used is the "50–50" form in which the federal subsidy is contingent upon the ability or willingness of the state or other unit to allocate an equal sum for the same purpose. This matching technique is employed in public assistance, road grants, and, indeed, in most fields: Where the state is unable to finance its share, in a very few cases the federal government supplied all the money directly; more frequently, it lends to the state the latter's quota in addition to making a direct grant of half the amount. This is most common in the case of public

[1]Lepawsky, *op. cit.* (Chap. III, n. 8), p. 187.

works grants. Another type of grant is seen in the plan under which the federal government furnishes most of the money for the National Guard, but here the federal supervision is so rigid and comprehensive that some students of government feel that the arrangement should not be classed as a "grant." Still another technique is used in the case of unemployment compensation. In order to encourage state participation in the program, state taxes are "credited" against 90 per cent of the federal tax. In other words, a businessman in a state which has adopted an acceptable unemployment compensation plan pays his tax to the state and is exempted from 90 per cent of the federal pay roll tax. If the state has no such plan, no local benefits are payable and the businessman pays the full federal tax. Where approved unemployment plans are in operation the federal government makes a grant to cover all the administrative expenses incurred by the approved state agencies.

Grants as a Cure for the Evils of Decentralization

On the whole the grant device seems to have alleviated some of the evils of decentralization already noted. States and local bodies have been able to undertake functions for which local revenues alone would have been insufficient. Even where they were within the range of state resources, social service and social regulatory programs have often been opposed either as undue burdens on the taxpayer or as handicaps to local industry—or as both. Federal aid has lessened the force of the first of these complaints and, by encouraging the co-operation of most states, has largely removed industry's fear of being placed at a disadvantage in relation to its competitors. It is difficult to say precisely whether such grants constitute a pressure toward the adoption of a federal—as opposed to state—"policy." The question centers around the definition of policy. Many of the

states hesitant about introducing social legislation were not fundamentally opposed to it, and in so far as the federal program merely removed difficulties which seriously hampered the social programs of the individual states, it cannot fairly be considered coercive. It is, however, true that in some cases the social legislation does not seem to have corresponded to state policies.

The grants-in-aid system has had other advantages. The central co-operating agency has been the medium for the interchange of information between states on administrative programs in the function supported by the grant, and has helped to remove some of the provincial ignorance and indifference of the states. Officials in Washington are often specifically assigned to make a comparative appraisal of various state and local practices, and their suggestions and recommendations are transmitted to the local agencies by the traveling representatives of the federal granting agency. Integration of employment service and unemployment compensation, for example, was an idea which federal representatives carried rapidly from one state to another.

It is often claimed, moreover, that the grants-in-aid system has been useful in raising state administrative standards in other ways. For instance, since the Social Security Board has imposed civil-service requirements on the staffs of state public assistance and unemployment compensation agencies, several states have extended the civil-service system to other state departments.

Such claims as these are more enthusiastic than the facts entirely justify. It is undoubtedly true that newly established state departments have been influenced by the standards set by federal granting agencies and have not been guilty of the rather low-grade administrative practices which in the past have characterized many state governments; moreover, it may be true that the influence of federal standards could be detected in the practices of state agencies. But the picture has

another side: many states have resented detailed federal regulations which they claimed have handicapped good administration. As a result of this attitude, they have lumped merit systems and other desirable administrative improvements among the things which a "bureaucratic Washington" was trying to foist upon them through fiscal pressure. Opposition, for instance, to the United States Employment Service merit system requirements was violent and without interruption. In a few cases federal administrators have gone so far as to suspend the funds in order to enforce application of the grant conditions, but in general many details of the requirements have been relaxed as a practical expedient for conciliation. The "blanketing in" of incumbents who passed the examination, regardless of their individual rank, and the elimination of many of the original educational requirements are typical concessions.

For a time it seemed that state personnel standards were influencing federal policy rather than the reverse. At least one commentator[2] feels that the specific provisions forbidding federal standards for state personnel which were written into the original Social Security Act were largely the result of opposition to the U.S.E.S. merit system program and to the rigorous, if informal, federal supervision of personnel under the Federal Emergency Relief Administration.

It also seems that, under their usual form, grants-in-aid do not provide a completely satisfactory equalization program. Certainly experience thus far shows that discrepancies between different sections of the country continue to exist. As Harris points out,[3] under the "50–50" or matched-grant system, the federal government pays three dollars per month to a needy aged person in Arkansas and fourteen dollars to a

[2]V. O. Key, *Administration of Federal Grants to the States.* (Chicago: Public Administration Service, 1936) 273.

[3]Joseph P. Harris, "The Future of Federal Grants-in-Aid," 207 *The Annals of the American Academy of Political and Social Science* (January 1940) 22.

similar person in Massachusetts. The five states of Arkansas, Alabama, Georgia, Mississippi, and South Carolina, with a combined population of eleven million, received from the federal government in 1938 $5 million for old-age pensions. Massachusetts, Colorado, and California, whose combined population approximately equaled the five Southern states, received $39 million for the same purpose. In every case the amount of payment necessary for decent subsistence, of course, is determined by the cost of living and whether or not the individual possesses private resources which merely need supplementing. It is hard to believe, however, that, after all these other circumstances have been taken into account, the aged in one section can be adequately cared for with a sum one fifth of that provided in other states. An equalizing program ought at least to consider both the total resources of the state and the number of aged among which the allocated state sum is to be distributed. Some of the poorer states are unable to raise any very large total sum for old-age assistance; others, able to provide larger sums for their needy aged, must spread the total over a far larger number of recipients.[4] New Hampshire, for instance, has nearly three times as many persons over sixty-five per 1000 population as does South Carolina. In many cases, the simple matching technique succeeds only in producing an inequitable distribution of assistance.

In the case of some grants, it is true, the matching provision is either omitted or is utilized only in part as the basis of apportionment. Highway grants are allocated to the states on the basis of population, area, and miles of road. While it is not necessarily desirable that one state already well equipped with highways should be given more money for construction than those inadequately equipped, still the basis of apportionment is fairly satisfactory. At least the more thinly settled states are not disproportionately handicapped.

[4]Key, *op. cit.* (above n. 2), p. 335.

The very small amounts turned over to the states for public health under the Social Security Act are apportioned in part on the basis of need. After a brief and unsatisfactory attempt to allocate F.E.R.A. funds partly on a one-to-three matching basis, partly on a basis of need, the matching technique was abandoned. Thereafter and until the cessation of F.E.R.A. it may be said that federal aid was apportioned almost wholly according to the administrator's judgment of state need. Presumably states were to supply a "fair share," and elaborate methods were devised to ascertain the financial ability of each state. Whatever amount over and above this state contribution was necessary to furnish adequate relief was to be supplied by the federal government. In actual practice the allocation became even more discretionary than this plan would indicate. As Administrator Hopkins wrote to Senator Glass, "These suggested quotas constituted only a basis of negotiation with the governors and legislative bodies of the states."[5]

The W.P.A. program which, so far as federal relief activities are concerned, succeeded the original F.E.R.A. program in 1935, was not on a grant basis but involved direct federal activity.

With very few exceptions, then, the system of grants-in-aid has not tended to serve as a fiscal equalizer among decentralized units of government with different levels of wealth. Congress is aware of the problem, but the formulation of a solution is not easy. For one thing, senators and representatives from wealthier states automatically react against a system of grants which would reduce the advantage held by their states, although, as a matter of fact, the direct federal expenditures for which they frequently do vote tend toward far greater equalization. In the second place, in the few

[5]U.S. Congress, Senate, Committee on Appropriations. *Senate Document #56, Expenditure of Funds, Federal Emergency Relief Administration.* (Washington, D.C.: Government Printing Office, 1935) xiv.

cases—such as emergency relief—where allocation has been left to administrative discretion, charges have been raised that politics—not need—dictated the state quotas. Whether or not these charges are well founded, the concentration of extensive discretionary financial power in the hands of one or a few administrators is a practice which many sincerely believe to be dangerous. Finally, although the matching provision impedes equalization, administrators themselves hesitate to recommend its elimination or relaxation. The fact that half the money under the present system comes from local sources has been some check on state politicians, and it is feared that the removal of this check might result in orgies of spending.

Other Weaknesses of the Grants-in-Aid System

Largely because the grants-in-aid system has expanded in a somewhat hit-or-miss fashion and without the guidance of a carefully planned philosophy to determine its place in the total governmental picture, certain other weaknesses are notable.

At present grants are made, on more or less liberal scales, for road building, old-age assistance, unemployment compensation, employment service, the National Guard, and agricultural education and extension work. Smaller grants are provided for aid to dependent children, aid to the blind, vocational education, public health, child welfare, maternal and child health, and vocational rehabilitation.

In such major fields of governmental endeavor as roads, unemployment compensation and employment service, some of the states urgently need financial assistance, but there is the danger that, because of readily available federal funds, states may be tempted to spend more for these functions than their essential importance justifies. Especially is this true of road building. Many states expend enormous sums

to provide fine highway systems—frequently at the expense of other services which would be of greater and more lasting public value. One thoughtful citizen remarked, as he sped over a magnificent new highway linking two cities in Michigan, "A few miles less of this road would go far to exterminate syphilis in the state; a few score miles less of it would make possible the care and rehabilitation of thousands of mental patients for whom our present equipment is inadequate."

Federal grants may also tend to unbalance state programs in other ways—especially where aid is available for only part of what should be a planned and co-ordinated program. Consider, for instance, the welfare field, where the federal government contributes generously to certain activities but provides no grants at all for general relief purposes. The result is particularly bad in poorer states whose local resources are meager and whose old-age pension lobbyists have been potent. Harris notes that in wealthy states relief expenditures are always at least equal to old-age benefits—sometimes three or four times as large. Yet Texas, with federal aid, spent twelve times as much for old-age assistance as it devoted from its own funds to general relief.[6] The very fact that a strong and often unscrupulous pressure group is backing old-age pensions makes it less defensible for the federal aid system to encourage and facilitate such dislocations of an equitable apportionment of total funds for all relief purposes.

The value of the existing plan of educational grants is similarly open to question. Vocational education is, after all, only a part of general education; yet under the influence of federal aid it has been subsidized independently, both to its own detriment and to that of general education. A recent report comments that "in positions concerned with instruction and supervision the salaries of vocational education per-

[6]Harris, *op. cit.* (above, n. 3), p. 19.

sonnel are frequently higher than those of high school, elementary, or rural school supervisors."[7] In 1938 nearly a third of the personnel of all the state departments dealing with education was employed in vocational education.[8] Yet it is generally agreed that vocational education has not become a well-integrated part of our educational system.

Many of the other weaknesses of the grants-in-aid program stem largely from lack of planning, but this particular issue raises a very fundamental question: Precisely what is the goal of the system? Is it to be considered a device by means of which the advantages of federal fiscal superiority can be obtained by the states and smaller units with a minimum loss of policy control? Or is it to be considered a device by which federal policies can be realized through the convenient administrative machinery of the states? It is undoubtedly true that state educational programs have too largely ignored the need for vocational education and that the federal program has done much to correct this situation. But the "correction" of a state policy amounts in practical fact to a substitution—at least in a limited field—of federal policy. It is one step on the road to political—even if not administrative—centralization. Before, therefore, the theory of the corrective grant is too completely accepted, it would be well to ask whether we are ready to relinquish political decentralization and the facility with which it adapts policies and programs to local needs and situations.

In other cases, the fragmentary federal grants program does not have such serious consequences or implications, but certain omissions seem unreasonable. Largely because they have been created during periods of differing concepts of policy, some closely comparable services may be state-

[7]Katharine A. Frederic, "State Personnel Administration," *Staff Study Number 3 of the Advisory Committee on Education.* (Washington, D.C.: Government Printing Office, 1939) 148.

[8]*Ibid.*, pp. 230–31.

supported, others may receive federal grants, and still others may be federally operated. Historical reasons explain but do not justify these anomalies. For instance, it is hard to see why unemployment compensation should receive the aid which makes possible high-grade administration, while workmen's compensation suffers from the lack of federal funds and federal administrative standards. Vocational rehabilitation of crippled persons is undoubtedly worthy of federal support, but equally worthy programs for the social rehabilitation of criminals rely solely on state funds. What fundamental policy underlies the decision that road building is a field in which grants-in-aid to the states are the most desirable plan while soil conservation is best handled largely through direct federal activity? The grants system would be improved considerably if a co-ordinated plan were worked out.

Recognizing these and other difficulties of functional grant-in-aid programs and still deploring the alternative of federal administration of increased functions, some thoughtful students have proposed that such a co-ordinated system of federal grants should take the form of block grants which the states might spend for any purpose they desire. There has been a good deal of hesitation about embarking on such a system. Some people object on the ground that enactment of such a program would necessitate the extension of federal taxation and that further infringement on states' rights would result if more state sources of revenue were turned over to the federal government. Others object that allocation of a particular federal tax to states would raise problems of just distribution. A third group argues that the state governments have not shown themselves sufficiently reliable to be trusted with federal funds which are not allocated to a particular function and closely supervised. All of these objections have some validity and yet they ignore the problems caused by the present fragmentary federal grants program

discussed above and the administrative difficulties of grants-in-aid discussed below.

A block grant system would in many respects resemble a system of federally collected, locally shared taxes. The writer suggests tentatively that federal block grants conditioned on general standards of state administrative performance might avoid some of the difficulties of both grants-in-aid and federally collected, state-shared taxes. Under such a plan sums of money could be apportioned to the states on such criteria of need as percentage of unemployed in the population, number of children of school age, and number of miles of federally recognized highway routes per capita. The British have worked out a system of block grants to localities with distribution based on a formula which weighs the population according to (1) the number of children under five years of age over fifty per thousand; (2) the percentage by which per capita tax values fall short of ten pounds; (3) the percentage of unemployed over 1.5 per cent of the population; and (4) the relation of population to miles of road.[9]

In the United States the use of similar criteria in one special field has been suggested. The F.E.R.A. attempted to lay down, but never carried into practice, objective criteria for the dispersal of relief funds to the states. To this end they outlined four general methods, and several supplementary ones, to care for special situations.

(1) By ten weighted indexes of economic ability
(2) By estimated economic group related to retail sales
(3) By estimated economic group related to population
(4) By application of uniform tax rates to estimated taxable wealth and income[10]

[9]Mabel Newcomer, *Central and Local Finance in Germany and England.* (New York: Columbia University Press, 1937) 189–90.

[10]*Expenditure of Funds, op. cit.* (above, n. 5), pp. xi–xiv.

The application of any such block grant system to the United States would be by no means a simple matter. Much study, careful analysis, experimentation, and, probably, revision based on experience would be necessary before a satisfactory formula could be achieved.

Important administrative safeguards against misspending of the money by the states would have to be devised. Federal authorities should be allowed to withhold funds if the state did not have a state-wide merit system of certain standards of efficiency. Such a requirement is now made by the Social Security Board for grants in its specific fields. General requirements regarding the conduct of state fiscal and accounting machinery—including a federal post audit—would probably be necessary, with federal power to withhold a portion of the grant in case of violation of these standards. Complete withholding of funds would of course be impracticable since federal authorities would not like to inflict such a hardship on the people of any state.

Federal Control of Aided Agencies

Not only do the forms and amounts of grants vary widely: there *is* also considerable variation in the methods of control applied. In his study of the administration of federal grants, V. O. Key lists the following major methods:[11]

(1) Advance approval of state plans and budgets
(2) Federal inspection and field service
(3) The audit
(4) Records and reports
(5) Withdrawal of federal co-operation
(6) Establishment of state personnel standards

Before attempting to appraise a few specific examples of federal practice, it may be well to restate the goals which

[11]Key, *op. cit.* (above, n. 2), pp. 369–75.

are to be kept in view: first, the maintenance of state administrative standards at a level conducive to the judicious use of federal money and to the achievement of the basic social welfare aims; second, the maintenance of the values of decentralization—adaptation to local needs, administrative flexibility, citizen education, opportunity for experimentation, and decentralization of political power.

The most frequently used federal control technique is the advance approval of state plans and budgets. Its desirability —like that of most of the devices—depends upon the spirit in which it is used. At its best, it may result in the willing acceptance of desirable suggestions, in the dissemination of important information, and in the elevation of state administrative standards. At its worse, it may be the means of exerting arbitrary control over internal affairs. For example, on the whole the Public Roads Administration, in its approval of new state road projects, has confined itself to such reasonable fields as the establishment and enforcement of standards of road curvature or thickness. On the other hand, the Social Security Board unemployment-compensation division has in the past demanded of the states a detailed line item budget, specifying every man in every office for the next quarter. Obviously such a policy, despite whatever political excuses might be offered for it, violated the whole principle of administrative decentralization.

The value of federal inspection and field services is largely dependent upon the attitude of individual inspectors. In general, these functions have been wisely and deftly handled by persons conscious that theirs was essentially a recommendatory and not a coercive function. Indeed, the very title of "inspector" is disappearing. The Public Health Service has "consultants," the educational services have "agents"; the Social Security Board has "representatives." To some extent, of course, the element of inspection remains, especially in connection with highways and other public

works, but it is becoming secondary to the element of consultation. If field men in agricultural extension work, vocational education, public health, and public assistance emphasize the educational, advisory, and co-ordinating aspects of their work, there seems little danger of undue central pressure.

The audit easily becomes a tool of more controversial value. A state agency should not object to a test audit to determine the regularity of its procedures and expenditures, but it might legitimately complain that a detailed review—and power of disallowance—of each administrative expenditure involves a degree of centralization incompatible with a truly federal system. As a matter of fact, the states did so complain when the Social Security Board was using the audit to keep a detailed check on public assistance payments. Largely as a result of their protests, the Board is now eliminating the audit of detailed public-assistance expenditures.

Records and reports, within limits which do not impose unreasonable clerical burdens, seem quite unexceptionable on all scores.

Paradoxically, there is little danger to be feared from the most powerful of all federal weapons—the right to withdraw funds. Such action is so radical that it is very infrequently taken. However, the threat of withdrawal retains great coercive force largely because, on a few occasions, the threat has been followed by action. While agricultural extension grants have been withheld only once in the past fifty years, and highway funds only three times, the Social Security Board has already in its brief life withheld federal funds in a half dozen cases. In most cases deliberate maladministration and discrimination, or culpable delay and inefficiency have been the charges. For instance, old-age assistance grants were withheld from Illinois in 1937 because of failure to establish adequate accounting records, to make reasonably prompt decisions on eligibility, to give hearings to rejected applicants,

and to give adequate instruction to county officials. In addition, federal agents found evidences of corrupt use of the funds.

Control of state personnel has appeared in three major forms. (1) There has been some attempt by federal agencies to interfere occasionally and on an unsystematic basis with individual state appointments. Such a practice, wholly indefensible, can easily grow into an assumption of extensive arbitrary power, and it fails to achieve any consistent minimum standard of administrative performance. In addition, as in the case of the Federal Emergency Relief Administration, it may arouse a widespread antagonism which seriously hinders the extension of genuinely useful control techniques. (2) Another policy, utilized, for instance, by the Office of Education, requires that certain standards of experience and training be met by the staffs of state offices. Whether this is a desirable system is open to question. A narrow professional group in Washington may set standards which can be met only by members of the same narrow group within the various states, although it may by no means be definitely established that they alone can adequately fill the positions. The ability of the states to experiment with different types of people and different "schools" of thought, which is a valuable part of educational progress, is seriously hampered by rigid requirements. It is, moreover, probable that what is the desirable type of personnel for one section is not desirable for another. Blanket specifications preclude any adaptation to local situations. Another danger rises from rigid experience requirements, which in some cases may actually serve to eliminate competent and desirable applicants. Unquestionably some "standards" are so framed that only the incompetent or the less competent can meet them. Personable and educated school teachers might make better "receptionists" than persons with years of clerical experience, which was one federal requirement. There

are several possible combinations of education and experience in law, business, and social work which might produce a better unemployment-compensation claims examiner than would years of claim-settlement experience with certain private companies which was another federal requirement.

(3) The most desirable method of personnel control is that adopted by the Social Security Board: the power to require state merit systems of selection. "Merit system" in itself, however, is no magic word which dispels all civil service deficiencies automatically. Merit systems, like other techniques, can be too rigidly or too loosely controlled by the central government. The federal agency may well insist that appointments be made only from eligible registers, that "political" removals be eliminated, and that the examining and appointing process be free from discriminating factors. On the other hand, states should be able to adopt personnel systems suited to local conditions, and they should be permitted to experiment quite freely with different technical and administrative devices. If such a middle way is followed, sound administrative practice and wise expenditure of federal funds will be more certainly insured while arbitrary federal interference will be precluded.

Conclusions

A few tentative conclusions can be drawn from the material in this chapter. The enormously expanded federal system of grants-in-aid has to a limited extent cured some of the evils incident to our decentralized federal system. It has facilitated interchange of information; it has promoted a nation-wide program of social legislation; it gives promise of raising state administrative practices and the caliber of state personnel. On the other hand, no general equalization has resulted; nor has the system, in its present piecemeal form, aided in the development of integrated federal-state-

local programs in various fields. The danger in the direction of increasingly rigid federal control is undue concentration of power; the danger in the other direction is at best, planless—at worst, corrupt—expenditure by the states of enormous sums of federal money. Later chapters (X and XI) will be devoted more particularly to proposals for improvement. Here, therefore, it will be sufficient to note that some modification of the matching provision seems essential in several fields; that considerable care should be taken to avoid dislocation of state programs; that supervisory techniques should be adopted which stress the advisory and co-operative rather than the coercive aspects of federal-state relations; and—most important of all—that a definite and comprehensive policy of grants-in-aid—probably a block grant system—should be worked out by the federal government.

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Chapter VII

Federal-Local Relations

In recent years as much publicity has been given to new developments in federal-local relations as to the extensive grants-in-aid system discussed in the preceding chapter. Although a certain amount of direct contact—usually of an informal type—has long existed between the federal government and local units, since traditionally the latter are "creatures" of the states and subject to state law, most federal-local relations have been through the state as the intermediary.

This hierarchical principle of federal-local contact only through the states has much logic to support it. Not only is it the implicit theory which underlies the Constitution, but the fact that the states are larger in size and fewer in number implements, by practical considerations, the logic of administrative feasibility. However, the impact of the depression on our national system proved that vitality as well as logic is necessary to the survival of such a concept—and practice—as decentralization. Too many states lacked vitality and failed to supply aggressive leadership in the campaign against economic disaster. As a result the impetus to action came from the national government. While the states, handicapped by cumbersome administrative machinery and relying for progressive policy making upon legislators who were poorly paid, restricted to short sessions, and without ade-

quate research facilities, fumbled and delayed, the field of direct federal-local relations was vastly enlarged. Federal-urban relations were further encouraged by the rural character of many state legislatures, who neither understood nor sympathized with urban problems. Thus it was that early in the depression, long before state action got under way, relief and public works programs were federally launched in direct co-operation with cities and towns. Since that time the scope of these relationships has been steadily increasing.

Federal-City Relations

Although the increase in federal-local relations on the whole has been considerable, federal-urban contacts have been even more intensified during the past decade than has federal-rural co-operation. In the study made for the Urbanism Committee of the National Resources Committee Wylie Kilpatrick cites almost a dozen different forms in which interlevel administrative connections may appear.[1] The following types are characteristic of federal-urban contacts. It should be remembered that in several cases the contact may partake of the characteristics of more than one type. The grading of municipal airports, for instance, is both a reporting and a regulatory function. Both the results of research and technical assistance are available to urban police from the laboratories of the Federal Bureau of Investigation.

REPORTING

Various branches of the federal government compile and supplement municipal data of many kinds. Elaborate and

[1]Wylie Kilpatrick, *Federal Relations to Urban Government.* (Washington, D.C.: National Resources Committee, 1939), Vol. I, Part II, pp. 77 ff. and pp. 153–4.

useful reports on urban finances, taxes, debts, and the like are prepared by the Census Bureau's Division of Financial Statistics of States and Cities. The same bureau is now publishing a new quarterly report on state and local personnel. "Uniform Crime Reports," based on municipal police reports, are compiled by the F.B.I.; as are health and welfare data by appropriate federal agencies, educational statistics by the Office of Education, comparative data on urban fire and police departments and on other public employees by the Census Bureau. In addition, out of the research of the Federal Housing Administration, the Home Owners' Loan Corporation, and the Housing Division of Public Works Administration have come extensive comparative data on building permits, zoning, inspection, and so on, which may prove very useful to municipal authorities. The federal government also publishes innumerable other urban statistics which are of more or less immediate use to local governing bodies. Thus data on urban housing, union wages, comparative employment figures, migration, and the like, may be valuable for states and local units.

These factual reporting services are of more significance than at first appears. City councils may develop more effective budgets if they know what other cities of the same general class are spending for police and fire protection, for street cleaning, and for pavements. Taxpayers and civic groups can more effectively appraise their local situations when they can compare services rendered and revenues expended in other communities. Administrators can at least roughly evaluate standards and methods of operation by checking results elsewhere. No careful student of government would contend that currently available comparative data are always reliable, but administrators who wish to make informed judgments find them indispensable. If more uniform and precise techniques of reporting are developed, this service may well prove to be one of the most valu-

able of the federal contributions to improved local government.

RESEARCH

It is impossible to do more than suggest the results of a few of the research programs being conducted by federal agencies. At least forty such agencies are making available information of great value to municipalities. The Public Health Service and the Bureau of Dairy Industry are contributing to improved health ordinances. Research into problems of street and highway construction conducted by the Bureau of Public Roads is locally applied by municipal street departments. Economic studies of ports and harbors are utilized by seaboard and inland-waterway cities. Municipal welfare programs are benefiting by the investigations of the Social Security Board. Uniform standards for weights and measures, model zoning acts, model building and plumbing codes, model milk ordinances have all been centrally worked out by the federal government and extensively adopted by cities.

TECHNICAL ASSISTANCE

Actual technical facilities of many kinds, as well as technical advice, have been made available to local authorities. Cities lacking adequate police laboratories can submit evidence directly to the Federal Bureau of Investigation for analysis; and, of course, the bureau's fingerprint service is available to all local law-enforcement agencies. Municipal health officers may submit food directly to the analytic laboratories of the Food and Drug Administration; and cities may secure serums, wild life specimens, and so on, from the various agricultural bureaus. Finally, the advice of the Library of Congress and of the Office of Education is at all times available to local libraries and schools.

PLANNING

As early as the 1920's the National Bureau of Standards in the Department of Commerce sponsored the drafting of model city-planning and zoning laws. More recently and more directly city planning has been notably aided by the National Resources Planning Board, the National Park Service, and the Department of Commerce itself.

FINANCIAL ASSISTANCE

Cities have secured federal funds for vocational education, social security programs, health work, streets, public works, and work relief. However, as a general rule, money for all but the last three is channeled through state agencies. Since these direct grants are supposedly of an emergency nature, the basic, long-run principle that federal financial aid to cities should be state-administered is apparently not being abandoned.

PERSONNEL

Control over personnel is, of course, to some extent exerted by the federal agencies administering grants-in-aid. Qualifications for local teachers in vocational education and rehabilitation are federally specified, and the Public Health Service directly allocates part of its expenditure to the training of personnel for local health offices.

In addition, the Civil Service Commission provides technical personnel advice for local governments and frequently prepares material and tests for municipalities.

Even more direct personnel service is afforded by the Federal Bureau of Investigation, which permits selected state and local law-enforcement officials to attend the bureau's training school. While the work of this school is not entirely adapted to the needs of municipal police forces, it has undoubtedly served a good purpose in making the men se-

lected for special training aware of recent general developments in their field and in disseminating to local police forces up-*to*-date information on such problems as ballistics.

"BUSINESS" CONTACTS

The federal and local levels of government also enter into various types of business contracts which may involve a considerable amount of intergovernmental activity even though no formal legislative action is included. For instance, contracts for the sale of land for governmental use, and for joint or reciprocal housing of governmental agencies are frequent. The United States Forest Service is responsible for the sources of water supply of eight hundred cities adjacent to forests. The Tennessee Valley Authority sells power and other services to fifty municipalities, and Boulder Dam sells water and power to the larger units in Southern California and to small municipalities in other Western states. A somewhat different type of "business" contact is that typified by the surveys of school systems which the Office of Education, for a fee, makes at the request, and expense, of the municipality involved.

REGULATION

Various municipal activities and agencies are subject to federal regulation. Certain of the standards which the Securities and Exchange Commission has set for the sale of securities apply to municipal bond issues. Municipally owned airports, radio stations, power projects, and railroads —like the privately owned ones—are subject to the Bureau of Air Commerce, the Federal Communications Commission, the Federal Power Commission, and the Interstate Commerce Commission. Although there are not many locally owned power plants or railroads, the number of municipal airports is considerable.

JOINT PARTICIPATION

Federal and municipal officials co-operate closely in the performance of such governmental functions as utility regulation, food and drug inspection, health services, and law enforcement. Frequently officials are commissioned to conduct such activities for both levels of government, and oftentimes they make joint inspections or raids.

INDIRECT RELATIONS

Many federal programs, although involving no formal contact with urban governments, are nevertheless of great social and economic significance to them. Notable examples of this type of benefit are the housing projects, park developments, flood control, mortgage insurance, and supervision of banks.

Not only are the number and variety of administrative relationships between federal and municipal governments increasing; legislative contacts are also more frequent of recent years. One of the outstanding examples of the past decade is the liberalized Municipal Bankruptcy Act passed by Congress, declared unconstitutional, and then repassed in an altered form. Obviously varying degrees of legislative contact are involved in the administrative relations noted above, and municipalities are becoming more and more aware of how closely their interests may be tied in with federal legislation. Both the American Municipal Association (an organization of the state leagues of municipalities) and the United States Conference of Mayors (representing chiefly the larger cities) have for some time maintained in Washington representatives whose function it is to guard municipal interests. The Conference of Mayors has been particularly concerned with the maintenance of W.P.A. appropriations.

Many, though not all, of the activities of these organiza-

tions—especially of the United States Conference of Mayors —may be classed as "lobbying." The organization of cities into pressure groups is in itself an interesting example of the way in which constitutional theory may be forced to give way to the pressure of need. Since state constitutions imposed debt and tax limitations and since state legislatures dominated by rural interests lacked understanding of urban problems, it was often impossible for municipalities to secure remedial action from the states. If they were to secure it from the federal government they felt that organized and concerted pressure would be more effective than individual appeals. State municipal leagues are also becoming more widespread and important. While these leagues are partly devoted to the exchange and dissemination of information, they are also influential in movements to secure state legislation favorable to municipal interests.[2]

There has been some criticism of the spending of public money by public agencies for lobbying—whether in Congress or elsewhere. It is, of course, true that unrestricted lobbying of certain types is undesirable and that all voters of an area are not necessarily agreed on the program sponsored by their officials. But if the municipal groups keep their pressure activities within reasonable limits, excluding such activities as bribery or the granting of special favors, the practice does not appear to be harmful. Governmental machinery cannot remain static in a dynamic world, and flexibility must be introduced into our system in one way or another. While the cessation of federal relief and public works activities will undoubtedly reduce the scope of federal-urban relations, there remain many problems whose solution would be facilitated by the presence in Wash-

[2]The fullest account of state municipal leagues is to be found in Harold D. Smith and George C. S. Benson, *Associations of Cities and of Municipal Officials* in *Urban Government.* (Washington, D.C.: National Resources Committee, 1939.)

ington of informed and responsible representatives of the nation's cities.

Although these new federal-local relationships are still in a formative state, their impact on our decentralized pattern of government is not unimportant to note. Of the nine forms of direct administrative contact listed above, eight seem to present no cause for concern. Federal reporting is not only unobjectionable; it is of real value in governmental research and progress, facilitating as it does comparisons between cities in different states. Federal research, technical assistance, and personnel training programs are in no way likely to undermine our states and cities. Assistance in the field of planning has always been on a purely voluntary basis and has been chiefly employed where state aid on this problem was unavailable. It is true that the sale of federal services to municipalities has sometimes resulted in a changed local attitude on such policies as public ownership of utilities. But since all such contracts are entered into voluntarily, federal influence cannot in any way be deemed coercive; it would be extravagant to brand it as dangerous to decentralization. Joint participation of officials in governmental functions, so far from violating the primary goals of our system, would seem, by strengthening its weak points, to be fundamentally preservative. Such slight friction as has, for instance, arisen between F.B.I agents and local police officers is neither serious nor incurable. Even the few federal regulatory activities do not appear to be damaging either to the spirit or to the practice of local self-government.

The most critical question, then, centers around such financial procedures as are involved in municipal P.W.A. and W.P.A. projects. It should be remembered that in view of the depressed condition of municipal finances and the enormous funds at the disposal of the federal government, the relationships have not been wholly "voluntary." Cities were in no position to refuse either the grants and loans or

the "strings" which were attached to them. Nevertheless, federal supervision, which constituted one "condition" for securing grants often improved administration, sometimes was absolutely necessary to insure proper expenditure of the funds, and was generally directed toward a common social good. On the other hand, it did involve federal interference in many essentially municipal concerns, and, especially in the case of better-managed cities, the various conditions sometimes unduly increased federal power, encouraged unwieldy administrative centralization, and did not always provide for adaptation to local needs. P.W.A., for example, laid down detailed conditions regarding means of financing and engineering the projects which it supported. While often good, these conditions were sometimes devised by engineers who had little knowledge of the situation for which they were prescribing.

It has often been charged that these federal-urban grants are dangerous in another way to the decentralized system: that by "short-circuiting" or "by-passing" the states they tend to weaken further the only units which under our system can effectively counterbalance federal centralization. A good many factors, however, affect the validity of this argument. Although the federal government frequently dealt directly with cities, defenders of this course point out that cities were not asked or encouraged to violate state laws or constitutions. The federal government merely requested—and usually secured—such changes in state law as were necessary to permit municipal bond issues or other municipal acts required to qualify the cities for federal grants.[8]

Probably this "by-passing" of the states is definitely to be criticized only in those instances where it interfered with a carefully co-ordinated state scheme for fiscal and adminis-

[8]Paul V. Betters, J. K. Williams, and Sherwood Reeder, *Recent Federal City Relations*. (Washington, D.C.: The United States Conference of Mayors, 1936) 138.

trative management of municipalities. Massachusetts, for example, claimed that P.W.A. was encouraging her cities to extend their borrowing in direct opposition to the state plan for reducing municipal debts. Without attempting to evaluate the Massachusetts plan of municipal debt reduction, one can definitely say that if it *was* a sound one, federal intervention in the opposite direction was certainly unjustifiable. However, it should be noted here—and it will be repeated elsewhere—that few states have any just complaint on this score. Most of them either lack any plan for the fiscal control of their cities, or have attempted to introduce exceedingly ill-advised ones. Most frequently, financial and legal arrangements are entirely capricious—too lax in one place, too rigid in another. Today the picture of state-local relations is a sorry jumble of inflexible constitutional or statutory municipal tax limitations, mandatory municipal expenditures, legalized malarrangement of local areas, protection for obsolete administrative structures, and inadequate or incompetent state supervision. While such conditions continue, few tears can be shed for the "by-passed" states. Stronger than the desire for decentralization is the desire for a government adequate to achieve our social welfare goals. As long as the states fail to take the lead in broad programs for the "general welfare" direct federal-municipal relations will undoubtedly continue and even increase.

Somewhat more serious is the failure of the federal government to operate in accordance with sound state and municipal planning or to work out any formalized arrangement for doing so. The Federal Housing Administration, for example, has undoubtedly succeeded in raising living standards in those subdivisions where mortgages have been insured, but it has not given adequate attention to the overall planning of the total community which it was thus helping to build. The weaknesses of F.H.A. result rather from this lack of comprehensive planning than from any more

culpable cause. For instance, in several cases, in order to reduce the cost of the houses, F.H.A. has sponsored suburban building outside the jurisdiction of the city which constituted the natural unit of control. Not only was the local governmental unit thus deprived of tax resources, but municipal planning was impeded. In some cases, the cities already possessed fairly well-defined health, zoning, recreational, and service programs which were seriously dislocated by the addition of uncontrolled, adjacent residential sections. Even where no such protective and service plans were currently in effect, future development of municipal planning was handicapped by this type of federal action.

Although the United States Housing Authority has been more aware than F.H.A. of these potential dangers, even it has not operated on comprehensive regional planning programs. The whole situation, it should be added, was not purposely created. It can be traced, in part, to the inherent weaknesses of administrative overcentralization; in part to the lack of adequate local planning; and, in very large part, to state failure to create metropolitan planning regions. Wherever the blame for it belongs, the difficulty is one undesirable result of direct federal-municipal relations. If the federal government had earlier been forced to enter into relationships with the states on housing matters, it would have been more likely to secure state establishment of adequate planning machinery.

Regardless of the actual or imputed evils arising from federal-urban relations, the relations themselves seem to be a symptom of a deeper problem: the failure of the states to cope adequately with the problems of the municipal governments for which they are constitutionally responsible. The indifference to the problems of vast metropolitan communities exhibited by predominantly "rural" legislatures, an indifference which will be further discussed later, is but the most spectacular of the many ways in which the states them-

selves have precipitated the "by-passing" they so vehemently condemn. As long as the present situation continues, it is difficult not to concur in the recommendation made to the Urbanism Committee of the National Resources Committee that "large metropolitan cities, especially regions crossing state boundaries, should be administrative areas for direct relations with federal authorities, under state enabling acts and interstate compacts if necessary."[4]

Federal-Rural Relations

In spite of the very considerable extension of federal activities into the sphere of rural local government during the depression years, the amount of direct contact is somewhat less than in the case of urban local government.

For forty years the figure of the county agent has represented some relationship between the Department of Agriculture and county units, and since 1914 there has been a well-organized system of county agents throughout the country. Sponsored by federal, state, and local governments, and supported either by appropriations from all three levels or by state and federal funds, the individual agent does not, however, have much direct contact with the Federal Extension Office of the Department of Agriculture. On the whole he is responsible to his county board and to the state extension office—and it is through the latter that federal influence operates. Because of the recent expansion of federal agricultural interests and programs, the role of the county agent is steadily increasing in importance, but there is little evidence that the amount of direct contact with the federal government is also increasing. It would seem rather that recent federal programs have tended to foster state supervisory and directive relations with these county agents.

Within the past few years the Department of Agriculture

[4]Kilpatrick, *op. cit.* (above, n. 1), p. 159.

has developed a system of county agricultural planning committees which deal directly with representatives of the federal Bureau of Agricultural Economics and of other agricultural agencies of the central government. For various reasons, however, this is not a clear-cut case of interlevel contact in the same sense as are the other relations we have been considering. While the county planning committees usually include some members of the county board or other representatives of the county government, they are not locally appointed nor are they formally attached to the county government as are the county agents. Moreover, plans drafted by the committees are subject to the approval of state committees and of departmental officials in Washington before the Department of Agriculture accepts and installs them. The system certainly deserves praise as an admirable example of administrative decentralization and as a genuine attempt to meet local needs and to increase co-operation between Washington and rural areas. But because local representatives are not chosen locally and because of the number of possible vetoes on local plans, it evades rather than solves the delicate problems of political decentralization.

To a smaller extent, the same decrease in real political decentralization seems to be resulting in the fields of public assistance and child welfare. Initially it appeared that the federal grants in these fields would be administered by the counties and serve to revitalize the latter. A genuine desire to encourage a maximum of local control was evidenced in the legislative enactments and in the administrative plans. Unfortunately, the results of the experiment have proved disappointing. County governmental machinery is usually archaic; county officials are too frequently ignorant, selfish, "political," or corrupt. In addition, most American counties are actually too small in area to serve as efficient units for the administration of public assistance—or indeed for many modern governmental functions. There is now an increas-

ing tendency toward the establishment of multicounty districts to serve as units in public assistance; where this step is not being taken, the federal government finds it necessary to insist on stricter state supervision of the counties.

Almost the same course has been followed in the case of public health grants. The failure of the counties as effective administrative units has led the states to encourage multicounty health districts.

At the moment, then, it can be said that direct contact between the federal government and rural local government is now neither extensive nor likely to increase. One factor in the situation is undoubtedly the stricter control over rural than over urban units maintained by state legislatures. But, in addition, the rural units are probably too small and too numerous to be dealt with conveniently by the federal government even if they were individually efficient. Finally, they have on the whole proved unfit for the functions assigned.

It may be that the failure of recent attempts to rehabilitate the counties will have widespread effects and that these rural units will be left to atrophy—like many townships—into governmental vestiges. Such a situation would be far from desirable if we are genuinely interested in maintaining a decentralized system. No plan of administrative decentralization, however efficient, serves the same purpose as political decentralization. More comprehensive suggestions for readjustment are presented elsewhere in this study, but at this point it may be noted that a conscientious attempt on the part of the states to establish rural local units which *are* adequate to handle the local administration of federal grants would be of great importance in the preservation of a decentralized system of government.

Conclusion

Waiving the question of constitutionality, we can perhaps evaluate the expansion of federal-local relations as follows: First, in many cases direct federal-municipal activity was the only solution to an immediate and pressing problem which state legislators would not or could not solve. The permanent desirability of such a trend must be gauged in terms of many complex factors. As long as large metropolitan areas, actually city-states in many aspects, cannot receive sympathetic and just treatment from state legislatures, their governmental importance probably deserves recognition in some extraconstitutional way. On the other hand, from the long-range view, it would be far better if all local units fell into their conventional subordination to reinvigorated state governments which were able and willing to engage in comprehensive and thoughtful planning for their entire jurisdictions and which were, for both political and administrative reasons, better fitted to be the agents of communication with Washington.

Second, neither the extent nor the type of federal-rural contacts endangers the importance of the state. As a matter of fact, the chief results of the contacts noted above seem to be the strengthening of state control over local units. Similarly the federal programs have aimed—even if unsuccessfully—at reviving local initiative and efficiency. If rural local units are a decaying part of the decentralized system, the results will be unfortunate, but the blame will not lie with Washington.

Chapter VIII

The Place of the States

THUS far we have been considering changes in the political pattern which have resulted from expansion of, or variation in, federal functions—changes which, for one reason or another, have consistently been headlined. According to the jeremiads of states' righters, the state governments are hapless victims of the federal lust for power. According to the glowing accounts of centralizers, the federal government is a shining knight who is fast liberating America from the evils of overdecentralization. But whether we are urged to regard the states as forty-eight less fortunate Horatii guarding the bridge of liberty or as so many barnacles on the hull of the good ship "Progress," we derive the impression, at least, that the states have already, in essential aspects, declined in power and importance. The validity of this view is open to serious question. To prove that the states are not now—and need not become—defunct is the purpose of this chapter, which will cite evidence of continued vitality.

Increased Fiscal Importance

First of all it should be noted that total state tax collections increased from $2,080 million in 1930 to $3,857 million in 1938 and that the state percentage of the total taxes collected in the country has risen from 20 per cent to 26 per cent. At the

same time federal tax collections increased from 34.8 per cent to 40.7 per cent and local collections decreased from 45.2 per cent to 33.2 per cent. In addition, state income has been considerably augmented by federal grants-in-aid. In 1938, 18 per cent of the state revenue came from that source. Since, however, some degree of federal control over activities which are partially subsidized by federal funds is customary, and since, in 1938, 36 per cent of the state revenue was reallocated to local units whose activities are often but very slightly under state supervision, it is not justifiable to take the increase in state revenue as an accurate gauge of an increase in state power.[1]

Increased Legislative Activity

Legislative activity is a better criterion of state vitality, and the past ten years tend to show a consistent expansion in this field. States whose previous social welfare programs had been confined to inadequate workmen's compensation laws and provisions for mothers' pensions, and poorly enforced regulation of children's working hours, have now adopted more or less complete social security programs. Through unemployment compensation laws every state in the union has attacked the problem of seasonal or cyclical unemployment, and every state is now administering assistance to the aged and to dependent children. Legislators are carefully planning comprehensive child welfare programs in states which ten years ago would not have seriously considered such regulation. A number of states have added to their staffs industrial health engineers whose task it is to study—and to reduce—the hazards of industrial employment. State public health departments are seeking and securing legislative sanction for more professionally and technically trained personnel. More or less comprehensive wages-and-hours legislation has been passed by approximately half the states, and state labor re-

[1]Lepawsky, *op. cit.* (Chap. III, n. 8), p. 186.

lations acts are now on the statute books of five—Massachusetts, New York, Pennsylvania, Utah, and Wisconsin. In addition, more than a third of the states have outlawed the yellow-dog contract and have passed laws restricting courts in the issuance of injunctions in labor disputes; and almost all have provided for conciliation services of more or less vitality. Interest in regulatory legislation is also increasing. So-called "fair trade" acts in several states actually predated congressional action.

Although much of this activity is a result of extensive grants-in-aid in several of the fields, and other developments have imitated or were stimulated by federal legislation, these facts do not justify any broad assumption that the states are powerless or without initiative. In the first place—whatever the source of inspiration—the activities of the state governments *are* increasing. In the second place, it is not always easy to decide whether some of the new activities are not resumptions of older state policies, the implementation of which was impeded by a federal judicial attitude now changing. For instance, thirteen states[2] had outlawed yellow-dog contracts prior to 1915, and Kansas had established in 1920 a Court of Industrial Relations which, though not entirely satisfactory, did possess many good features. All these experiments in policy were declared unconstitutional by the Supreme Court, which has liberalized its doctrines only very recently.

By and large, however, the new federal programs have had a noticeable effect on the legislative, administrative, and supervisory activities of the states. Recently federal administrators have allowed the states to exercise increased discretionary power in policy decisions under grants-in-aid; in other ways the so-called "subordination" of the states has actually resulted in an increase in state authority.

[2]California, Colorado, Connecticut, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Nevada, New Jersey, New York, Oklahoma, Oregon.

Kilpatrick notes this tendency in two fields.

In health surveys and administrative techniques, research and investigations, quarantine, mental hygiene, venereal-disease control, promotion of milk and other standards, and enforcement of meat, food and drug regulations, Federal activity stimulated and aided the state health departments at the same time that contacts were maintained directly with county and municipal agencies. To these services are now added the financial aids for health under the Social Security Act. The result is that local health organization, qualifications of health officers, purposes and amounts of expenditure come under an initial review and prescription by the state departments in allotting Federal funds contingent upon local observance of state and Federal specifications.

. . . Possibly more significant [than relief supervision] from the long-run point of view is the hastening of state supervision and state administration of categorical welfare by the Social Security Act. In 1934, the year before the law was passed, exclusive state administration of old-age assistance was found in 4 states, state supervision of local welfare administration obtained in 11 states, and the administration was exclusively local in 14 states. Two years later, in 1936, the year after the law was enacted, the administration of old-age assistance was exclusively a state function in 9 states, 1 state divided responsibility with local units, and the states supervising local administration jumped to 25 in number. . . . With the increased importance of the state under the Security Act, the question becomes that of the degree of state control resulting from the emerging security system. The answer can be traced in the location of administrative responsibility in the states co-operating with the Social Security Board.[8]

Kilpatrick then presents a table showing that in November, 1936, of the states co-operating in old-age assistance, 17 had exclusive state administration, 2 had divided state-local responsibility, and 23 had state supervision of localities. In the

[8]Kilpatrick, *op. cit.* (Chap. VII, n. 1), p. 100.

field of aid to dependent children only one had local responsibility, the other 32 either having exclusive state administration or state supervision.[4]

Meanwhile the performance of the more traditional functions continues unabated. State activity in connection with roads, education, conservation, agricultural regulation, business regulation, and general internal legislation has certainly not declined. It would, indeed, be difficult to discover a single important activity in any of these fields which has been lost to the states and assumed by the federal government in the last decade.

Allocation of Functions between States and Localities

At the same time there seems to be some tendency toward a shift of certain functions from the local to the state level. A few states have followed North Carolina in turning over to the state government the major responsibility for education. Many more are tending to centralize highway construction and maintenance functions. New York and a few other progressive states have taken over from local units for regulatory purposes the licensing of certain occupations—for example, that of realtor. The shift of public utility regulation to the state government which has been in progress since 1900 is now largely complete throughout the country. The new public assistance statutes subject to the approval of the Social Security Board have assigned to the state certain types of welfare work formerly handled by the counties. State police departments have expanded rapidly and are in many instances taking over the protection of life and property in rural areas. And finally, the system of conditional state grants-in-aid is steadily expanding with a resulting more or less efficient, but nevertheless potent, control of local activities. Even more marked is the increase of state supervision

[4] *Ibid.*, p. 101.

over local units which has been mentioned above and will be more fully discussed in the following chapter.

Critique of the New State Functions

The desirability of state assumption of all these and other new functions in the light of the fundamental criteria of our decentralized system is a vital question.

Political commentators are more generally concerned with the state-local than with the state-federal aspects of this problem. On the whole it is not usually felt that the state activities listed in this chapter are within the proper sphere of federal control or administration. But there are exceptions to this generalization which should be noted before the effect of the changes on the traditional local decentralization are considered.

Among students of unemployment compensation and among the employment offices there is considerable doubt whether or not the administration of those services on a state basis violates the fundamental assumption of our citizenry that governmental mechanisms for dealing with national problems must be worked out on a national basis. The frequent shifting of workmen from one American state to another in accordance with job or living opportunities makes the state a somewhat questionable unit for these services. A man who lives in Chicago and wants work in Gary or lives in New York City and wants work in Hoboken or lives in St. Louis and wants work in East St. Louis may conduct his dealings with two entirely autonomous employment office systems. Although there is a system of "clearance" between state services to secure needed workers from other states, such a system is necessarily clumsy as compared to the clearance which could be worked out within one employment service. Similarly unemployment compensation procedures for paying benefits to a worker whose credits

were secured in Michigan but is now back on the farm in Kentucky are more complicated than they would be in a unified national system.

Even in these services where the values of nationalization might be greatest, the unifying influence of the federal grants-in-aid system achieves some of the same effect, and state administration of other new nation-wide programs is generally approved. Although some federal grant administrators dislike some of the twistings and turnings of state policy or administration which run contrary to Washington desires, generally those interested in public health, public assistance, and labor legislation are pleased to have state administration because they feel that the services come closer to the "grass roots" in this fashion than they would through direct national administration.

Far more frequently the expansion of state functions is criticized as a threat to the fundamental advantages of decentralization, and vigorous controversy occurs over allocation of governmental activities within the state. Should local self-governing bodies surrender to the states such functions as the construction of through highways, which is now being handled by most of the state governments? Should state highways be maintained by local units? Should old-age assistance be administered by the state or the locality or jointly? Should general relief be administered by state or locality? Should personnel systems in counties or cities be administered by a state agency or by the local units? Should states establish uniform accounting systems for local units or conduct audits of municipal accounts?

All these and similar questions of allocation of functions have been hotly debated issues in various states in the last two decades—an indication of how seriously the challenge of centralization is taken within our states. In Michigan recently in two legislative sessions and one election state control of certain aspects of welfare supervision was the cause

of bitter conflict. A major argument over the question of county or state administration of certain merit systems required by the Social Security Board has caused controversy in California. Illinois recently had a contest over state audit of municipal accounts. Several years ago the state of North Carolina took over administration of all road making and a minimum school term, but similar proposals were fiercely rejected in other states. No uniform pattern can be found in regard to allocation of most of the important functions of government to either state or local units.

There is no ready solution to these problems of allocation. While the advantages and disadvantages of decentralization outlined in Chapters II and III are helpful, they do not give the detailed answers needed. The following more specific principles are suggested as possibly helpful.

The allocation of functions between state and local governments need not be as permanent as that between federal and state governments. When the assignment of function is by constitution, state constitutions are usually more readily amended than the federal Constitution. When the assignment of function is by statute, changes are even more simply made.

It follows that greater weight can be given to temporary conditions in making state-local assignments. Where the state government has not in recent years maintained a higher standard of efficiency than the local governments, the reason for state assumption of functions is naturally less. Where, on the contrary, the state government has been well run, the demands of the citizenry for generally effective government may in certain instances overcome the arguments for decentralization.

For example, it was reasonable that while the Illinois League of Municipalities was opposing a proposal for state audit of municipal accounts in Illinois, the New York Conference of Mayors (an organization similar to the Illinois

Municipal League) was supporting a request for more appropriations for the state office which audits municipal accounts in New York. For various reasons related to the calibre of governors and the strength of administrative traditions, Illinois state administration has for more than a decade been of distinctly lower standard than that of New York state. Illinois might well do a poor job where New York was doing a good one. On similar grounds it would be unwise to assign many municipal functions to the state in Michigan, where, although many good administrators exist, traditions of spoils, politics, and administrative disintegration keep the general level of state administration far below that of Michigan municipalities. In North Carolina, however, the balance scales of administrative standards might tip in favor of state as contrasted to municipal enterprise.

It is also important, in allocating functions, to observe the principle that the vital processes of administrative machinery should not be transferred to other levels of government. In a study of state administration of municipal civil service made in Massachusetts a number of years ago the writer came to the conclusion that to divorce an essential function like personnel administration from a local government and to put it in a state agency had very undesirable results. The responsibility of municipal officials for high administrative standards in their own cities was impaired by state control of personnel. Legislation hostile to good personnel management was forced on cities which otherwise would not have received it. Experimentation and adaptation were not possible.[5]

The application of this principle—that state government should not take over vital administrative functions of localities—would eliminate a number of state activities which many students of government approve. For instance, it

[5]George C. S. Benson, *The Administration of Civil Service in Massachusetts.* (Cambridge: Harvard University Press, 1935.)

would affect the programs under which New Jersey's state Civil Service Commission exercises personnel functions for cities and counties, and Indiana's state government reviews the budget of local units. The latter scheme, however, has been sharply criticized recently, which may confirm the suggested principle.[6]

The generalization does not apply to voluntary arrangements for state services to localities in such specialized administrative fields as personnel and purchasing. It certainly should not apply to municipalities grouping together to furnish such services to themselves as do the Michigan cities in the Purchasing and Personnel Services of the Michigan Municipal League.

Moreover, the generalization, it should be noted, applies to state exercise of vital local administrative functions, not to state supervision of such functions. If New York State has an administration able to audit municipal accounts and to supervise municipal civil service effectively, there can be no objection to such activities, provided the audit and the supervision do not become actual management which impairs local responsibility. The distinction between internal financial management and external audits is one which could reasonably be applied to these fields.[7]

Although space does not permit a detailed review of the allocation of all functions, the application of the points made in Chapters II and III in a few cases will indicate that in some fields state administration is desirable while in others its value is definitely questionable.

It seems to be agreed by a majority of citizens, for example, that construction of through highways is a function which the state should assume to serve the purposes of all.

[6]George W. Spicer, "Fiscal Aspects of State Local Relations," 207 *The Annals of the American Academy of Political and Social Science* (January 1940) 156.

[7]George C. S. Benson, *Financial Control and Integration.* (New York: Harper & Brothers, 1934) Chap. I.

Engineering talent and mechanical aids can be more readily assembled by the state. The highways serve considerably more than the population of one county. Planning their development has become a problem of reconciling state-wide interests, not one concerned solely with local interests. Such values of decentralization as local adaptation and experimentation become of less importance, while the arguments that decentralization creates unequal financial burdens and prevents effective large-scale planning and administration are of more significance.

In connection with education, on the other hand, the balance seems to lie the other way. Education, although it raises problems of state- and nation-wide interest, is a function which can profit greatly by adaptation to the needs and resources of a particular area. It is also a function which might yield great power advantages to arbitrary persons if it were generally centralized. Although local units may need central support in financing education, the arguments against central administration seem to be overwhelming.

Public health is a function which requires a vast amount of state and national planning and co-ordination, but the actual administration of which benefits greatly by decentralization. It can be better co-ordinated with other community efforts and is more readily accepted by localities if it is operated on a decentralized basis.

Public utility regulation has tended somewhat to follow the rule that the regulatory area should be as large as the economic units it is trying to regulate. As a result there has been a considerable trend away from local to state regulation of utilities—a trend justified by the cases of interareal evasion and the financial and legal superiority of the large utility companies when the regulatory agencies have been the smaller municipal governments.

Care of prisoners, defectives, delinquents, and insane has by common consent gravitated to state governments in most

instances. The advantages of large-scale operation have been the major reason for this centralizing allocation. A higher grade of building, of medical care, and of other services can be furnished by the states for large numbers of inmates.

Other functions are not so easily classified. Allocation of public assistance has been a subject of battle in many states. Proper administration of it should have a degree of specialized work which many local units are unwilling or unable to apply. The problem of poverty is frequently a problem of economic or health conditions which extend far beyond the area of most local units. On the other hand, the task has been traditionally one of decentralization, and it requires adaptation and co-ordination with other local units. Because in many cases these considerations seem practically to balance each other, numerous compromise programs have resulted.

Conclusions

While, then, federal functions have been expanding, so likewise have state functions. Some commentators have even wondered whether state entrance into—or rigid supervision of—formerly local activities is not as dangerous to the entire system of decentralized government as is recent federal action. This fear seems extreme. As long as municipal governments possess their present vitality and the counties give evidence of continued existence, overcentralization in the forty-eight state capitals seems unlikely. There have been many bitter arguments over allocation of functions to the states, but few new state functions belong to the federal government, and analysis does not indicate that the state governments have made many mistakes in raiding a badly organized patchwork of local governments for new state functions. In spite of widespread "warnings," there seems little danger that Albany and Lansing, Tallahassee and Sacramento will be the ghost cities of the 1940's.

Chapter IX

State-Local Relationships

THE preceding chapter has stressed the expansion of state functions, and has noted the tendency of the states to increase in many fields their supervision over local units. Since the challenge of centralization is, in terms of our entire system, as important on the state-local levels as on the federal-state, an analysis of the new relations of the states with their governmental subdivisions is necessary to round out any study of contemporary changes in the traditional pattern of decentralization. However, because of the differences in internal policy among the various states, it is far more difficult to generalize about state-local relationships than about federal-state contacts. The situations outlined in this chapter are average, but of course, what is true in thirty or forty states may not be true in the others. For this reason, local circumstances must be taken into consideration before any attempt is made to apply to any one state the data and conclusions outlined here.

Home Rule

A curious reversal in state policy toward local self-government has occurred during the past forty years. A tendency toward decentralization—at least for urban areas—gained considerable impetus before 1925, but since then a

countertendency has set in. A brief résumé of the home rule movement will be helpful in understanding this situation.

In American legal theory, cities, counties, townships, and other local units are creatures of the state. Since almost all governmental agencies desire to exploit to the full—and even to expand—their powers, it is not surprising that state legislatures frequently intruded to an undesirable extent in affairs which were actually matters of local concern. Conscious of these abuses, seventeen states[1] made belated and often partial attempts through so-called "home-rule" amendments to reproduce on the state-local level some form of the constitutional federal-state division of power. In these cases, however, the local governments, instead of possessing all powers not expressly delegated to the state, have been granted jurisdiction only over affairs not of "state-wide concern." The ambiguity in language of this sort is obvious, and the courts have frequently interpreted the amendments in a way that leaves municipal "home rule" an almost meaningless phrase.

In spite of these difficulties and in spite of the fact that only a few states have adopted it, home rule has played an important role in maintaining and developing the principle of decentralization. For example, it has facilitated experimentation in forms of government and administrative methods and has stimulated the use of new and improved technical devices. The city-manager plan, civil service, municipal budgeting, improved techniques in police, fire, and health administration have spread among cities with a rapidity which shames the inertia and provincialism of most state governments. Granted that state enabling legislation

[1]Missouri, 1875; Washington, 1889; California, 1896; Minnesota, 1898; Oregon, 1906; Oklahoma, 1907; Texas, 1909; Colorado, Michigan, Nebraska, Ohio, 1912; Maryland, 1915; Pennsylvania, 1922 (not effective); New York, 1923; Wisconsin, 1924; Utah, 1932; West Virginia, 1936.

was necessary before cities in states without home rule could install the new devices developed by home-rule cities, much of the initial experimentation as well as the general impetus to reform elsewhere is to be credited to home rule.

The home-rule movement, however, has languished during the past decade although the reforms which it initiated are still spreading. In the past sixteen years only two states have adopted constitutional home-rule amendments. In the seventeen states where home rule is possible, home-rule charters have been secured by relatively few cities, and the legislatures, with judicial sanction, have increasingly delimited the scope of "municipal affairs." At the same time the scope of state interference has expanded. For instance, states have not only restricted the sources of municipal revenue; they have also made mandatory certain municipal expenditures without regard to municipal budgets. Wisconsin, for example, requires all municipalities to pay police officers five dollars a day.

At least one of the reasons for the failure of home rule to win a more widespread place in our governmental system is unrelated to the centralization controversy. A reform movement is always slowed up when other devices, more or less successful in checking the same abuses, may be tried out. To some extent objectionable state legislative interference with local affairs has been restricted by various types of constitutional prohibitions against local or special legislation. However, it should be added that these prohibitions are frequently circumvented by the device of classifying local units. Obviously a statute applying to "all cities over one million" in a state which possesses only one such city is special legislation. Similarly such absurd "classes" as "all cities with populations between 100,000 and 105,000" are palpable screens for state interference in special situations.

Far more genuinely remedial are the liberal legislative

provisions for optional city charters passed in such states as Massachusetts and North Carolina, and the so-called *adoptive* legislation used in some states. Thirteen states now permit practically all cities a clear option between the three major forms of municipal government.[2]

The progress of home rule where most desirable has often been considerably hindered by that disgrace of so many states—malapportionment. It should be remembered that of the twenty-one states, the larger part of whose population is urban, not *one* has an equitable system of representation. Chicago, which sends to Springfield thirty-two fewer legislators than she rightfully should, is but one glaring example of a widespread evil. New York, Detroit, Boston, and other large cities are similarly "counted out" of the legislative process before the ballots are cast. Obviously, no largely rural legislature will favor any scheme which lessens its control over the tax resources and other assets of the cities. Where this generalized financial interest is tied in with efforts of rural Republicans to keep a whip hand over urban Democrats, actual financial and legal discrimination against city governments often results. The report of the Urbanism Committee of the National Resources Committee gives an example of a typical process:

> In a state like Illinois, which governs Chicago, the nation's second city, a study of a dozen major regulatory acts, passed during the last thirty years, shows the following distinct tendency: the city initiates the regulation, develops technical standards of compliance and installs an inspection service, and then the state steps in with a state law, enacts some of the standards set up by the city, and takes over the licensing power, together with the fees, of course, without, however, adequately enforcing the standards, without setting up an effective inspection

[2]For full details see George C. S. Benson, "Classes and Forms of Municipal Government" in *The Municipal Year Book*. (Chicago: International City Managers Association, 1938) 166–96.

service, and sometimes without setting up any inspection service whatsoever.[8]

Detroit, Cleveland, and New York City have in the past few years suffered equally at the hands of rurally controlled legislatures—especially in the field of welfare finance. Obviously this power of exploitation will not be readily relinquished, and genuine home rule has been consistently blocked.

In terms of this study the most relevant of all obstacles to home rule, however, is the very real uncertainty whether, under present circumstances, it is a technique adapted to the governmental needs of modern society. State supreme courts have fairly consistently held that taxation was a matter of state concern. Obviously if cities are subordinate to the legislature in this field of finance which is basic to all government, home-rule amendments mean little. Courts have also interpreted constitutional provisions dealing with education in a way which permits considerable state interference in that aspect of municipal activity. It has already been noted that public utility regulation is now very generally a state function and that state police agencies are constantly increasing in importance. It is true that the regulation of utilities or the operation of a police force by cities with small areas and narrow boundaries is often administratively unsatisfactory, and that in other fields, also, the existing municipality is not a geographical or economic area capable of home rule. As long as this remains true and as long as the governmental functions of naturally cohesive areas are split among city, township, and county units, state control is the only solution to problems of planning, policing, and regulation. If the entire local government system were rationalized in the manner proposed by Professor Anderson and discussed in Chap-

[8]Albert Lepawsky, *Development of Urban Government.* (Washington, D.C.: National Resources Committee, 1939), Vol. I, Part I, p. 24.

ter X, home rule would be considerably more practicable and might be more widely adopted.

Thus far we have been considering only the municipal sphere of home rule. While interest in this phase of the movement seems to be on the decline, interest in county home rule seems to be increasing. Since the automobile has made possible the scattering of large urban populations, and since the extension of new social security systems to all territories within a state, the county is experiencing a revival of importance. Unfortunately in most states, counties are still constitutionally or statutorily bound to elect principal officers, to create unwieldy boards of supervisors, and to indulge in other undesirable governmental procedures, but a third of the states, either through home-rule amendments or through "optional form" provisions of some type, now permit the adoption of more workable forms. California, Maryland, New York, Ohio, and Texas have adopted county home-rule constitutional amendments. More or less liberal optional county charter provisions exist in Georgia, Illinois, Louisiana, Missouri, Montana, Nebraska, North Carolina, North Dakota, Oklahoma, South Dakota, Virginia, and Washington. Since little use has as yet been made of these devices, it is impossible as yet to generalize about the utility or success of county home rule. It may be that the American county in its present form does not possess the solidarity of interest necessary to make it a vital unit of self-government. If this is the case, unless extensive county reorganization is to take place—city-county consolidation in urban areas, and more rational county boundaries in rural areas—the county will become an administrative subdivision of the state. Unfortunately the latter seems the more likely result of present trends. State administration or very close state supervision of county functions is increasing. Public welfare, public health, road construction and maintenance, and other important functions are slowly but generally being transferred

from the counties to multicounty districts or to state governments. The obvious result of such transfers is to lessen both the impetus to and the need for planned reorganization and consolidation.

To a large extent this drift toward centralization has grown out of the mistaken policies of the counties themselves. They have too conservatively resisted the pressure toward consolidation of unreasonably small counties and reorganization of the cumbersome county administrative machinery. Consequently they are actually unable to handle the new or enlarged functions which they could otherwise assume and thus gain increased power and prestige. If the desire for genuine local self-government reasserts itself, it is possible that in some states, at least, eventually a new, streamlined supercounty may emerge as an effective governmental unit. In most cases it seems more likely that the county will become a governmental vestige.

Perhaps because of the difficulties which have arisen from home rule in practice and because local governments in many cases seemed incapable of home rule, a countermovement toward centralization has recently become marked. In many cases both the extent and type of state control has been ill advised, again illustrating the basic arguments for decentralization.

There is little question that the rigid constitutional and statutory control of local bodies which is found in many states results in less efficient local government. The wisdom of the constitutional or statutory limits on local indebtedness which exist in thirty-two states may admit of controversy, but the arbitrary limitations on property taxes which were passed by many states during the 1930's are undoubtedly undesirable. Some of these laws, however, were relaxed in order to permit federally financed and administered municipal projects. For instance, "revenue bonds" in excess of the debt limit were permitted. Nevertheless, with state efficiency

being what it is, there is still too much legislative and administrative control of local units.

William and Annette Fox have demonstrated that these state limits on indebtedness have complicated the problem of local government by causing the creation of a number of special-purpose authorities which are free of constitutional debt-limit requirements on local government. The Public Works Administration has encouraged the creation of such authorities.[4] One can sympathize with the motives of all concerned here and still feel the general result undesirable.

State Aid to Localities

It has been noted before that one of the fundamental problems of decentralization centers around the fiscal superiority of the larger units of government and the consequent difficulty with which the smaller units secure adequate financial support. In this respect the states have genuinely attempted to aid decentralization.

It was noted in Chapter VIII that in 1938, 36 per cent, or $1,400 millions of state revenue was returned to the localities in varying forms of grants. The figure is probably even higher today. The largest grants are made in the fields of education, road building and maintenance, and welfare, but some aid for public health and other functions is also extended. The considerable expansion of the state grant-in-aid system is largely the result of depression conditions. Assessed valuations declined sharply, and irate taxpayers secured arbitrary tax limitation amendments to state constitutions; in consequence the major source of local revenue—the property tax—simply failed to supply local needs. State legislatures were forced to levy new taxes—on liquor, on sales,

[4]William J. R. and Annette Baker Fox, "Municipal Government and Special Purpose Authorities," 207 *The Annals of the American Academy of Political and Social Science* (January 1940) 178–80.

and on incomes—and to devote the bulk of the proceeds to local government.

Two major policies have developed: state-collected, locally shared taxes, and grants-in-aid. At first glance the former system—by which certain taxes collected by the state are distributed to localities in proportion to population, area, or some other criterion—seems the ideal method of supplementing local revenues without imposing administrative controls prejudicial to decentralization. It has received much support in state legislatures from advocates of home rule. There was an initial attempt on the part of writers and students of government to distinguish state-collected, locally shared taxes entirely from the grants-in-aid, but in actual practice the state governments tend increasingly to attach conditions to the payment of the taxes to localities and even to allocate them for specific purposes. Thus any distinction between the two types based on degree of state control is becoming less valid, and the state-collected, locally shared system has certain marked weaknesses. There seems little evidence that it has operated to decrease materially the fiscal inequalities between local units within the state. This is the conclusion reached by a student of public finance,[5] and it is not hard to find political reasons why it should be so. Legislatures, attempting to settle in brief and infrequent sessions the most complex fiscal problems, have often through localism or ignorance arrived at flagrantly inequitable bases of distribution. For instance, taxes are often reallocated according to place of origin. Obviously this is quite unrelated to the criterion of need. The procedure has encouraged extravagant expenditures in some localities and has protected tax evasion colonies, while it has done nothing to alleviate the situation in communities which lack the funds to maintain even

[5]Roy Blough, "The Relative Place of Subventions and Tax Sharing," Chapter IX of *Tax Relations among Governmental Units.* (New York: Tax Policy League, 1938) 83 ff.

a minimum social welfare program. In other cases, some system of distribution has been adopted which tends to perpetuate highly uneconomic, almost useless units in areas where consolidation would be an intelligent solution of some of the urgent fiscal problems.

As a means of equalizing financial disparities—especially in the case of education—grants-in-aid have been somewhat more satisfactory than the system of state-collected, locally shared taxes. Equalization is also partially achieved in the fields of roads and welfare, and, on the whole, state grants can be called "promising."

Since the payment of the grant may be conditioned on local acceptance of certain administrative or legislative policies, it offers an opportunity to require standards of performance from localities. In Britain this opportunity was used very effectively in the first three decades of the twentieth century to raise the entire performance of British local government. However, the techniques by which a granting agency maintains administrative standards have not been very effectively employed by the American states. For example, the reports of President Roosevelt's Advisory Committee on Education indicate that few state departments of education possess staffs which can effectively assist any large number of local education units. Auditing and inspection are not extensively used as control methods, and the threat of suspending funds—that potent supervisory weapon of the federal government—is seldom invoked by state education departments. What state control there is over local school administration is largely of the inept, arbitrary, and often unenforced legislative variety. Statutes may set minimum school terms but they may also require that the evil effects of alcohol be instilled in the minds of fourth-graders. Even when reasonable per se, legislation often provides an unreasonable condition for the specific grants-in-aid. Frequently

there is no evidence of a well-planned state policy underlying the total program of education.

The system of highway aid has had a similar lack of success in effecting satisfactory administrative controls. In most states local units are still responsible for the construction and maintenance of secondary roads, and usually some fraction of the gas and auto-license taxes is returned to them for this purpose. The records show few instances in which state highway departments are successfully supervising local expenditure of such funds; in fact, county administration in several states has been so defective that increasing portions of the road system are being placed under direct state control. The most outstanding example is North Carolina, which in 1931 turned all highway work over to the state. Centralization of highway control has been almost as sweeping in Virginia, while Pennsylvania, West Virginia, and Oregon are following the same course but to a more limited extent.

Ironically, it is chiefly where federal bureaus force effective supervision of local departments upon the state that the grants-in-aid are proving most successful as a means of preserving and revitalizing our decentralized system. In the field of public assistance, for example, the Social Security Board demands that state welfare departments provide adequate supervision and maintain effective personnel standards in the county agencies or, if that is not possible, set up a system of state administration. In those special aspects of education —vocational and agricultural—which receive federal support, the state departments exert a much stronger control over local standards than in the general educational field. A similar situation prevails in public health work.

The explanation of this paradox undoubtedly lies in the too "political" complexion of most state governments. The legislature dominates the administration and the "county ring" dominates the legislature, especially where rural coun-

ties are overrepresented in a badly apportioned legislature. State departments which do not have the financial—and moral—support of the federal government live in constant fear that "politically" undesirable action, however justified in the name of administrative standards, will bring swift punishment—either directly from a rural legislature or indirectly from an executive who builds his power on rural support. While this situation continues it is futile to look to the states for satisfactory leadership in a campaign to preserve the values of decentralization through grants-in-aid.

The state grant-in-aid system has other disadvantages in addition to its failure to maintain administrative standards. It has tended to encourage local expenditures in one field where the locality might need aid more in another field. The same criticism can be applied to the state-collected, locally shared tax where the locality is required to spend the proceeds for only one function. Thus in Michigan, northern counties are spending excessive quantities of state funds on roads of doubtful usefulness while their crying need is for vocational readjustment of a standard population. An inflexible system of grants-in-aid and state-collected, locally shared taxes leaves local units no discretion in selecting the functions most in need of financial assistance.

The problem is analogous to the "splintering" effect of federal grants-in-aid on state finance discussed in Chapter VI, and the same solution—a "block grant system"—would seem equally applicable. A "block grant," it will be recalled, is one which is not specifically earmarked for the conduct of any particular local function. Local units may be subsidized in accordance with their needs—measured according to various standards such as number of children of school age, unemployed in the population, or per capita assessed valuation—but left relatively free to plan their own governmental programs.

While the block grant may become an important part of

American state-local fiscal relations in the distant future, there are two reasons why it will not make much progress soon. First, the disintegration of American local government into counties, townships, school districts, and cities greatly complicates the problem of distribution of funds to localities according to need. Difficult though it is to arrive at formulas which give a satisfactory measure of over-all governmental needs in any local area, it is even more difficult to devise distinct equitable formulas for county, township, and school district needs.

Second, the block grant should, as suggested in Chapter VI, be accompanied by general administrative controls to prevent misuse of central funds by the local unit. Few of our American states have developed administrative standards which would enable them to exercise a helpful or efficient general administrative supervision over local units.

Additional State Administrative Supervision

It is not only in fields where state grants are made that the statutes provide for supervision of local government. Every state maintains some control over utility regulation and over highway construction and maintenance by local units. Although only fourteen states had grants-in-aid health programs at the time of the publication of the report of the urbanism committee, all required state approval of local health work. State authorities must usually inspect sources of local water supplies and local sewage disposal plants. In most states, too, the safety of public buildings must be attested by a state officer. State financial supervision is definitely increasing. A state audit and inspection of local accounts is required in forty states; state installation of accounting systems in thirty-six; state-prescribed budget forms in thirty-four.[6]

[6]Kilpatrick, *op. cit.*, (Chap. VII, n. 1), pp. 22–23.

While theoretically state supervision may have many advantages, in actual practice certain weaknesses are evident. In the first place, the administrative standards of most of the states are not themselves above criticism, and it is therefore not surprising that no notable rise in local standards has resulted from the increased supervision. In the second place, even if state standards were considerably higher, the desirability of some of the supervisory techniques is questionable. During the depression years some ten states gave to state officials discretionary power to approve municipal bond issues, and statutory tax limitations were fairly common. It is well to remember that in 1938 the governmental costs of the largest cities in New York, Michigan, Wisconsin, and Maryland exceeded the state budgets. Although these are rare cases and municipal inefficiency and corruption are far from unknown, if we are to preserve the system of political decentralization, the larger cities, at least, should be trusted to plan their own functions and to handle their own fiscal problems. Even the fact that the widespread defaults and absorption of operating budgets by debt services during the past decade probably resulted in part from heavy and injudiciously planned local borrowing during the 1920's for construction purposes, does not justify too rigid a state control.

It is on the financial side, where "administrative supervision" too often implies the substitution of state for local policy that the dangers to local self-government are most apparent. However, even in technical matters, cities, like states, should within reasonable limits be free to experiment with different personnel and fiscal policies. From such experimentation results widely useful may emerge, or results particularly applicable to local needs may be achieved. The role of the state should be largely advisory. In certain emergencies direct financial aid may seem necessary, but states which, like North Carolina and Massachusetts, can think of no solution to municipal bankruptcy but the assumption of

a city's governmental functions by a state commission have either failed to understand or decided to abandon the principle of decentralization.

It is not only in the field of finance that state supervision has occasioned dissatisfaction. Frequently conflicts between state and local regulations are unavoidable. For instance, municipal power to regulate speed or traffic signals on state highway routes through a city is defended by the city in terms of "home rule." Here is an obviously "local" concern. State officials, on the other hand, are interested in the broader aspects of the situation. Motorists who drive through a dozen cities in one morning can be more efficiently controlled through uniform speed laws and uniform traffic regulations. There is some justice in the claims of each side. This example, which shows the difficulty of achieving satisfactory adjustments of conflicts of this sort, also suggests the utility of an increased use of co-operative machinery. Many times local opposition to an essentially reasonable state policy is based not on a dislike of the actual provision but on a dislike of dictatorial methods. Boards, similar to the joint federal-state boards for the regulation of motor vehicle traffic mentioned in Chapter IV, might well develop more harmonious relations between the two levels even when the state agency is the dominant one.

Conclusion

In considering these evidences of expanded state power, it must be remembered that governmental activity on all levels has shown a consistent long-run tendency to expand. Many of the criticized federal and state "encroachments" merely represent the assumption, by one or another level, of functions which *no* governmental agency previously performed. Opposition comes not alone from rigid constitutionalists,

eager to allocate with precision each field to its proper level of government, but from those desiring to maintain a laissez-faire governmental policy. However, a trend toward centralization is also taking place both on the federal and state level. The shifting pattern shows the federal government entering fields previously left to the states, and the states expanding and tightening their control over local units. To some extent and in some fields this is not only admissible but desirable. It is not useful to insist on state—rather than federal—regulation of matters which need regulation if the states are basically unable to impose it. Similarly, it is hardly helpful to insist that police protection be a wholly local concern in the light of the numerous cases in which state police forces have rendered indispensable services to local communities. The basic question is: which level of government can best perform a given function in order to achieve not only maximum administrative and financial efficiency but also maximum governmental values of all kinds—including the values of decentralization? The answer depends in individual cases both on the nature of the function and on the comparative political and administrative standards of the levels of government involved.

Chapter X

Proposals for Readjustment

THERE have been two major motifs in the preceding chapters. In the first place, we have seen that the American system of political decentralization has important values—values fundamental to the political, social, and economic life of America as we have known and know it. On the other hand, this same system has failed and frustrated us at many points. It has promoted inequities; it has created intergovernmental friction; it has sanctioned law evasion; it has left uncontrollable vast areas of activity which should be controlled, incurable vast numbers of diseases which should be cured. In the second place, we have seen that in an attempt to meet new situations, new problems, and new dangers, a shift in the old governmental pattern has been taking place. Some of the changes may be generally deemed good, others bad, or a given reform may be considered good or bad according to the judge. On the whole, one of the most serious charges which can be leveled at the process we have been reviewing is its over-all lack of destination. Most of the reallocation of functions has been in response to immediate and *specific* needs. Students of government meanwhile have been attempting to formulate various remedial plans for a permanent readjustment.

In general it may be said that the suggestions fall into three primary groups—each approaching the problem of readjust-

ment at a different level. Some writers feel that the most crucial need is for "readjustment from the top." Others believe that reform on the middle level—through various kinds of interstate co-operation—is the best approach; still others maintain that the local situation is the one with which fundamental improvement must begin. It is important to remember, while reading this chapter, that these groups are by no means *opposed* to each other. Few of the reforms would be mutually exclusive, and many of them would be most effective if used to supplement others at a different level.

Readjustment from the Top

Constitutional amendments tending toward the centralization of control over social and economic interests and toward regionalism are the two proposals of this class which are most frequently encountered. Others have been suggested but have not yet been thoroughly analyzed.

(1) As long ago as the Forty-ninth Congress (1884–86) there was agitation to amend the Constitution so as to permit federal regulation of traditionally "internal" state affairs. At that time were proposed—in addition to a national prohibition amendment—amendments to empower Congress to limit the hours of labor, to pass uniform marriage and divorce laws, and to forbid states to "hire out" the labor of prisoners.[1] The movement toward expansion of federal activity by amendment has continued with intermittent force and, as we have already noted in Chapter V, the judicial nullification of the original A.A.A. and of the N.I.R.A. were promptly followed by agitation for constitutional amendments which would increase congressional power over business. Some writers even urged that the government be wholly unitary

[1]Bryce, *op. cit.* (Chap. I, n. 3), 359, n. 2.

in the field of commerce—somewhat on the Canadian plan.[2]

While the more liberal interpretation of the power over interstate commerce which has characterized recent Supreme Court decisions has in some measure removed the impetus toward such amendments, this very tendency necessitates an immediate appraisal of the desirability of centralized control in this field.

In terms of the values listed in Chapter II there is much to be said against general regulation of business by the federal government. The concentration of power in Washington would certainly be enormous. In a field so directly affecting most citizens, the need for local adaptation is important. There is some question whether so intricate, detailed, and diversified a function could even be efficiently supervised—not to say actually administered—from a central office. If, as seems likely, the task is such that extensive delegation of administrative power and of discretionary "policy making" is almost inevitable, are not the states as well adapted as federal subdivisions to the performance of the work?

Theoretically, the arguments militate against federal assumption of this power. Yet we cannot escape the fact that most of the states, in practice, have failed to supply any efficient or meaningful regulation of business activities. If to achieve the social welfare goals of our government such regulation is essential, and if the states continue to display their inability to furnish it, then obviously the task will very soon, from sheer necessity, fall to the federal government.

The recent apparent success of the controlled and unified German economy has led many people to wonder if some such organization is not inevitable in a complicated industrial society like ours. Other persons view this same sort of

[2]One of the most scholarly discussions of such a proposal is to be found in James Hart, "A Unified Economy and States' Rights," 185 *The Annals of the American Academy of Political and Social Science* (May 1936) 102.

unified control as a horrible example of what to avoid—pointing to the disadvantages of militarism, suppression of civil liberties, and favoritism to high politicos which characterize the German regime.

While it is extremely difficult to predict what will happen, at the present time it seems as if both points of view are correct. If Germany wins the war now raging, the world trade system will collapse even further than at present, central control of much of our economic system will indeed become inevitable. In such a situation thoughtful students of traditional American institutions would need to be doubly careful to preserve our civil and political liberties. In so far as certain portions of the necessary economic controls can be delegated to states and localities, such delegation seems desirable. It is to be hoped that Congress can devise some method of utilizing these other levels of government for this purpose.

(2) The word "regionalism" has in late years been employed in so many different senses that its various meanings must be clarified and their implications separately evaluated.

First, there is the philosophy of regionalism which has recently permeated the works of many writers—especially in the South. This group—whose leader is Professor Howard W. Odum of the University of North Carolina—has built upon F. J. Turner's historical thesis that American politics has been largely developed in terms of sectional forces, a social, political, and economic thesis that sectionalism can be constructively transmitted into "regionalism." Their plan, in so far as it is specifically worked out, involves social planning on a regional basis. It is perhaps well to quote Professor Odum himself on the nature of the regionalism which he advocates:

> . . . there are certain fundamental distinctions between sectionalism such as Frederick Jackson Turner's authentic historical, political, economic sectionalism of the nation and the present developing cultural and administrative regionalism of the

United States. I note five distinctive features, each of great significance. The first is that regionalism envisages the nation first, making the total national culture the final arbiter, while sectionalism sees the region first and the nation afterward. In the second place, sectionalism emphasizes political boundaries and state sovereignty, technical legislation, and local loyalties. Where sectionalism features partisan separateness, regionalism connotes component and constituent parts of the national culture. In the third place, sectionalism may be likened to cultural inbreeding whereas regionalism is line breeding, or regionalism may be considered as cultural specialization within geographical bounds in an age which continuously demands wider contacts and standardized activities; or it may be the way of quality in a quantity world. In the fourth place, sectionalism is analogous to the old individualism while regionalism features cooperative endeavor. And finally, one of the most critical aspects of sectionalism is that it must ultimately lead to a centralized coercive federalism, which is contrary to the stated ideals of American democracy.[3]

The obvious difficulty with all this is its vagueness. Sectionalism is everything which is bad, regionalism is everything which Professor Odum deems desirable. Yet sectionalism is by his own admission an entrenched and dominant force in American history, and we are given no clue as to the specific nature of the transmuting agent. Equally important is the failure to suggest the mechanisms through which regionalism—granting its emergence—is to work on a political level. The impact of regionalism on business decentralization and on literary and political thought is considered, but its practical political application is largely ignored. It is true that in another volume Professor Odum and Professor Harry E. Moore advocate regional and subregional planning bodies.[4] But planning has not yet assumed in the American scene

[3]Howard W. Odum, *The Regional Approach to National Social Planning.* (Published jointly by the Foreign Policy Association, New York, and the University of North Carolina Press, Chapel Hill, N.C., 1935) 19.

[4]Howard W. Odum, and H. E. Moore, *American Regionalism.* (New York: Henry Holt and Company, 1938) 272 ff.

sufficient governmental vitality to become a significant nucleus for a dominant new political force.

Far more specific is the proposal made by Professor W. Y. Elliott of Harvard. Convinced that federal administration of all the necessary new activities is now unwieldy and would rapidly become even more so, and that the existing states are too small and geographically too illogical to conduct many of these functions, Professor Elliott proposes that the federal government delegate some of its legislative and administrative powers to authorities to be established in a number of major regions.[5] This suggestion has been somewhat more harshly treated by critics than it deserves. It is, of course, true that the legislative aspects of the plan are impracticable. The American states seem unlikely to abdicate their legislative powers in any existing fields, and consequently the establishment of regional governments would merely add another level to complicate a system already somewhat overendowed with political units. But Professor Elliott has attacked a basic administrative difficulty which no existing technique solves. The increasing tendency toward regional decentralization of federal agencies will be discussed below, but as yet these regions have not been geographically standardized. As a result federal functions on a regional basis have not been adequately correlated, and the integrated adaptation to local needs which Elliott's plan would facilitate has not been achieved.

No discussion of regionalism can ignore the importance of the Tennessee Valley project. Here is no theoretical proposal, but a regional program for power generation and transmission, flood control, and agricultural development which includes parts of seven states and which is an actually working enterprise. It includes primarily Tennessee, Mississippi, Alabama, and Kentucky. Virginia, North Carolina,

[5]W. Y. Elliott, *The Need for Constitutional Reform.* (New York: McGraw-Hill Book Company, 1935.)

and, to a slight extent, Georgia are also included. In its independence of other federal over-all agencies and in its merely co-operative relations with the state governments T.V.A. would seem to be strictly a "regional" unit. For this reason it is particularly interesting to analyze and appraise it and to consider whether it forms a pattern for future regional decentralization.

In the first place, it should be noted that T.V.A. in no sense represents *political* regionalism. There is no legislative authority in the region. As one Southerner has pointed out, it was not devised by Southerners for the South.[6] Of the four directors which the T.V.A. has had up to the present time, only one came from the area included in its administrative activity.

As a planning and subsidizing mechanism T.V.A. has served very useful purposes; it has also undoubtedly promoted a certain degree of co-ordination and adaptation of federal administrative policies to the local economic needs. However, even in terms of purely administrative regionalism, it cannot be deemed a perfect model. In a few unusual cases where one or a few great problems in a certain area need forceful co-ordinated treatment, similar agencies may prove to be desirable. On the whole, however, the true goals of administrative decentralization are probably not achieved in this way. T.V.A. is not only independent of other federal agencies; it cuts across the programs of many of them—for example, of various bureaus in the Departments of Agriculture and the Interior and in the Federal Power Commission. Thus many over-all services available elsewhere in Washington may be duplicated, and normal administrative processes are confused. Regionalism on this basis provides no exact

[6] Donald Davidson, "Political Regionalism and Administrative Regionalism," 207 *The Annals of the American Academy of Political and Social Science* (January 1940) 138–43.

standards for the equalization of services or of resources in different sections of the country.

It has been more or less implicit throughout this discussion that the type of administrative regionalism which is necessary in the federal government is a type conducive to a co-ordination of the functions of various existing agencies within regions which are "natural" units of decentralization. As James W. Fesler points out,[7] the present federal administrative areas have been set up largely to secure arbitrary reduction of the span of supervisory control or other internal administrative advantages. However, some departments have attempted to decentralize procedures with a view to the homogeneity of local needs within the area and with the intention of adapting administrative action to the varying situations. It is here, as Mr. Fesler says, that the results are most discouraging since there is considerable evidence that, viewed in this way, regions are fluid. Boundaries which include an area in every way suited to unitary treatment of conservation problems, for instance, may be completely artificial if one is thinking in terms of utility regulation. The problem is probably not insoluble, but it calls for more careful experimentation, analysis, and planning than have yet been accorded to it.

(3) Another plan for readjustment from the top proposes that the federal government levy certain taxes in order to share the yields with the states for general state purposes. This proposal could strike at the fiscal inequality which is one of the greatest difficulties of our decentralized system and theoretically would not result in such disruption of state policy as follows certain aspects of the grant-in-aid system. While this federal version of the "state-administered, locally shared" tax system would not be subject to many of the difficulties noted in Chapter IX, it would raise problems of its

[7]James W. Fesler, "Federal Use of Administrative Areas," 207 *The Annals of the American Academy of Political and Social Science* (January 1940) 111–15.

own.[8] The criteria of allocation are exceedingly difficult to work out satisfactorily. Undoubtedly "need" in some form should be the basis, if equalization were the aim; yet standards of need presuppose to some extent a federal determination of the proper state services. The present level of administrative and legislative efficiency of our state governments does not augur a reasonable expenditure of such funds without federal supervision; but if supervision were introduced, another opportunity for federal policy control would be added. The financial allotment might easily become a sort of 100 per cent grant-in-aid for specifically approved purposes. As an equalizing technique, and perhaps as a salutary molder of state policies, this procedure might be effective, but it would certainly constitute one more way in which decentralized government could be weakened. This would be especially true if the additional federal taxes in any way competed in fields of state taxation.

One way to achieve the values of such a plan while avoiding these difficulties would be to adopt a block-grant system like that described in Chapter VI. Under such an arrangement the requirements imposed on the states receiving the federally collected funds would be very general in nature. First, each state should be asked to submit to a federal post audit of all its expenditures. No powers of disallowance should be granted the federal government, but full publicity should be given the audit. Second, each state should be required to establish a merit system which would meet certain general standards determined by Congress.

Critics will comment that such controls would indeed weaken our system of decentralization. At one time I held the same point of view. But further analysis shows that an important means of strengthening our decentralized system of government is the universal adoption by the states of the

[8] See the discussion of the "Graves-Edmonds" plan in *National Tax Association Proceedings* (1934) 161–87; and (1936) 254–65.

minima of good government—good financial and personnel controls. Such controls would be sufficiently general to insure maintenance of opportunity for experimentation, adaptation, and other advantages of our decentralized system.

Simpler than the federally collected, state-shared tax system is the proposal that the federal government should act as a collection agency for the states as the legislature of each state may direct. Under this plan state autonomy would not be affected at all and the advantage of the broader scope of federal tax administration would be gained. The major disadvantage is the lack of any effective equalization between states of uneven fiscal resources.

Readjustments on the State Level

Although some of the most serious weaknesses in our system, which stimulated some years ago the extensive demand for "interstate co-operation," have been solved by such centralizing measures as the wages-and-hours bill, there is still ample scope for "interstate co-operation." Whether or not it can prove, as was once hoped, "the alternative to federal centralization," it can at least supplement that centralization in many important fields.

Of the several mechanisms through which interstate co-operation can be achieved, some have been in use for a considerable period and others are practically untried. None, however, has reached a state of development which would eliminate it from the group of "proposals for readjustment."

One of the oldest of the devices is the interstate compact. The federal Constitution, by saying "No state shall, without the consent of Congress . . . enter into an agreement or compact with another state,"[9] somewhat backhandedly sanctions these agreements, and more than fifty compacts, ar-

[9]Article I, Sec. 10.

ranged by two or more states, have been approved by Congress. Until recently the subjects of these agreements were relatively unimportant—interstate bridges, boundary lines, policing of interstate streams. Recent attempts to extend the compact technique to more vital issues have met with varying success. The Port of New York Authority—which is responsible for bridges, tubes, harbor development and most of the physical facilities of the port—has been successfully functioning since 1922 as a result of a New York-New Jersey compact. On the other hand, after long years of unsuccessful negotiations with Arizona, a compact for the division of the waters of the Colorado River was finally adopted in 1928 by the other six states concerned and approved by Congress. There seems little to indicate that Arizona's interests would have been damaged by joining the agreement. Her opposition, ostensibly to an undue diversion of water to the other states, seems to have been based upon the local value of a "states' rights" stand. She even went so far as to bring suit in the Supreme Court against signatory states on the ground that the compact unconstitutionally violated her internal sovereignty. Where one state in a "natural" region refuses to sign the compact, this technique obviously fails to achieve its best results.

The two major compacts for commodity production control have been only moderately successful. The failure of the tobacco compact is probably attested by the fact that the Department of Agriculture is now urging other measures for production control. Even the oil-conservation compact, which has on the whole worked fairly well since its adoption by six states in 1935, has been handicapped by the failure of at least one major oil-producing state to co-operate. Moreover, in this case the federal government may be partially responsible for the success of the compact. Under the N.R.A. and later by congressional action interstate shipment in excess of each state's oil quota was expressly forbidden. This aid to internal

enforcement became effective in time to lend federal sanction at the very beginning of the compact.

Whatever value the interstate compact may possess as a means of preventing increased federal centralization seems unfortunately to be offset by its serious disadvantages. As we have seen in the instances cited above, one or more states whose co-operation is essential to the success of the plan may hold aloof for various reasons. Except in a limited number of cases where Congress has given blanket consent in advance to certain types of compacts, the procedure for formalizing the agreement is slow and cumbersome. At present, blanket consent is confined to such relatively uncontroversial fields as crime control, parks, and flood control. Once made, compacts are not easily enforced in controversial fields, and it is slow and painful work to secure alterations even when they are necessary or desirable. On the whole it would seem that the interstate compact would be most useful if confined to spheres where the goals were generally acceptable and where political aspects were least likely to intrude.

Attempts to alleviate difficulties on the state level by means of other types of interstate co-operation have also been made. The encouragement of uniform or reciprocal laws in adjacent states, the implementation of joint approaches to multistate problems, and the elimination of competitive attitudes have engaged the attention of many groups. Certainly the most outstanding organization in the field of interstate co-operation is the Council of State Governments, an organization now composed of commissions on interstate co-operation established by almost all state governments. The Council is closely affiliated with several national associations of state officials—the Governors' Conference, the American Legislators' Association, the National Association of Attorneys General, and the National Association of Secretaries of State.

With a clear recognition of the evils and weaknesses of the present system of decentralized government, the Council has

worked to eliminate the evils without altering the basic pattern. It threw its force into the movement for uniform state laws controlling crime—a movement now carried on by an independent Interstate Commission on Crime—and can claim at least partial credit for the laws stipulating reciprocal supervision of paroled prisoners, exchange of police rights in pursuit of fugitives across state lines, and interstate rendition of witnesses which have been enacted in many states. It initiated an investigation into the problems of interlevel tax conflicts. It sponsored the attack on Delaware River pollution which was successfully carried on by an official interstate commission. Most recent of its interests has been the problem of interstate trade barriers, and there are indications that it has been successful in demonstrating to a large number of state legislators the evils of this tendency.

Probably the Council of State Governments and the organizations with which it works have contributed more, in proportion to their resources, to the effective reform of our system than any group dealing with any level of government. However, the program of interstate co-operation which it has sponsored possesses certain inherent limitations. Co-operation of this type is entirely voluntary, but whatever the democratic ideal, experience indicates that permanently successful results, especially in controversial fields, can be secured only when some element of constraint is involved. The Council has been able—and may continue to be able—to prevent undesirable actions even in controversial spheres and to stimulate effective work where opposition is not widespread or deep rooted. It is more questionable whether any voluntary mechanism could push through and maintain a program in the face of strong economic or political counterpressure.

The National Conference of Commissioners on Uniform State Laws, as its name suggests, is concerned with a narrower aspect of co-operation. Although in its forty-eight years of existence the Conference, composed of delegates

appointed by each of the states, has devoted much thought and study to the problems of the federal system and has drafted more than ninety uniform state laws on various subjects, it has not, on the whole, had a highly successful record. On an average, each of the laws has been adopted by only a quarter of the states, and the states which have adopted them show an increasing tendency to make important alterations.[10]

Mott believes that several factors are responsible. In the first place, since legislators are not included in the Conference, and since the legislative turnover is exceedingly rapid, many of the lawmakers are unfamiliar with the high standard of work done by the Conference. Second, the cooperative connection with the American Bar Association maintained by the Conference has probably alienated two groups: the less informed who are suspicious of "technical experts," and the more liberal who are suspicious of the Association's conservatism. And third, the uniform state laws suggested may actually not fit the legal systems of particular states.

Moreover, useful though this type of work may be in certain matters of business procedure, it can never solve some of our most pressing problems. The Conference itself aims only to promote uniformity "where uniformity is deemed desirable and practicable." It is a serious question whether in many cases experimentation and local adaptation are not far more important values of a decentralized system than uniformity. If we are to learn from the experience of others, if we are to adjust the essentially sound parts of a plan to our own local circumstances, then rigidly "uniform" state laws are not desirable in many important governmental fields. The failure of national prohibition proves that "uni-

[10]Rodney L. Mott, "Uniform Legislation in the United States," 207 *The Annals of the American Academy of Political and Social Science* (January 1940) 82–90.

W. Brooke Graves, *Uniform State Action.* (Chapel Hill: University of North Carolina Press, 1934) Chap. III.

form" legislation on the liquor question is impracticable; housing codes suitable in states of dense population or of rigorous climate are not necessarily applicable to different situations; and even where, as in social legislation of various sorts, minimum standards may be desirable, variation of detail is often essential.

The last type of adjustment on the state level which we shall discuss is "federal-state co-operation." The interstate compact, of course, is an example of such co-operation, since it involves both state and federal agreement. Grants-in-aid are also instances of this sort of arrangement. W.P.A., C.C.C., and N.Y.A. projects are frequently designed to aid state and local officials. In these cases, too, there is "federal-state co-operation."

In addition to compacts involving federal and state action, grants-in-aid, contractual relations, and loans, there are many other types of federal-state co-operation which have done much to ameliorate the existing evils. In a chapter in her volume, *The Rise of a New Federalism*,[11] Professor Clark considers informal relationships of many kinds, including the use of the informal joint federal-state board by the I.C.C., the Federal Power Commission, and the Federal Communications Commission. It should be noted, however, that relationships of this type are not entirely without danger. Professor Clark notes that there have been cases in which federal officials under the guise of such co-operative activity have utilized evidence procured by state officials through means invalid under federal law. Precautions against "ganging up" of this character should be taken. Professor Clark also mentions the aid given to local and state police forces by the Federal Bureau of Investigation through its fingerprint service, its training school, and its Uniform Crime Re-

[11] Jane Perry Clark, *The Rise of a New Federalism*. (New York: Columbia University Press, 1938.)

ports. In addition, of course, joint apprehension of criminals has been fairly frequent.

Of a somewhat different nature is federal-state co-operation in the planning field. Since the numerous state planning boards postdated the National Resources Board, ideally the combination of state and federal activities should have resulted in a planning program of nation-wide scope—integrated yet adequately localized. Actually the results have been disappointing for at least two reasons. In the first place, many states were neither psychologically nor administratively prepared for the idea of co-ordinated planning. Second, there is considerable question whether the National Resources Board itself possessed at the beginning any clear-cut idea of the function of governmental planning agencies—either state or federal. Obviously with such vagueness on both levels, the *relations* between the two were inevitably rather obscure. Even now one of the major obstacles to a thoroughly satisfactory co-ordinated system of planning is the ambiguity of the administrative position of the agencies in the governmental framework.

Another device which seems to promise increased utility is the co-operative use of government personnel. An executive order issued by President Grant on January 17, 1873, forbade any federal officeholder to accept a concurrent state office. Still unrescinded, the order has been allowed to decline in force peacefully. In the administration of the C.C.C. state machinery has been used under federal direction; the members of the joint boards provided for in the Motor Carrier Act who are nominated by state commissions may function as federal officials; federal officers are occasionally deputized to assist in state law enforcement.

These co-operative relationships have proved very useful, especially in fields where federal and state activities overlap, and they will probably continue to be employed. However, they constitute neither an adequate nor a wholly unex-

ceptionable solution to the basic problems of decentralization. They in no way touch such major evils as fiscal inequality, interstate competition, and interstate evasion, and by confusing administrative and political jurisdictional boundaries, they sometimes arouse interlevel jealousies and conflicts.

One more type of federal-state co-operation, by which the specific difficulties of social legislation might be solved, will be noted: the removal of federal protection of interstate commerce from subjects of restrictive state legislation. This device has already been used to some extent. Prior to national prohibition, shipments of liquor into "dry" states were congressionally prohibited and the action was upheld by the Supreme Court. When the Eighteenth Amendment was repealed, the repealing amendment expressly removed the protection of interstate commerce from interstate liquor shipments, thus facilitating state regulation. Similarly, effective as of January, 1934, Congress in 1929 removed the protection of interstate commerce from goods manufactured by convict labor, an act which was held constitutional,[12] as was the subsequent law by which Congress made it a federal *offense* to transport convict-made goods into a state forbidding their sale.

It has been proposed that this same technique be more widely used to protect state powers of social legislation,[13] but experience has already proved that serious difficulties may arise. Aided by Supreme Court decisions which so interpreted the Twenty-first Amendment as to place no restrictions on state legislation, the states have built up, under the name of "regulation," interstate trade barriers. Protection of local beer and wine industries seems to have been a more dominant aim than social welfare. Out of this

[12] *Whitfield* v. *Ohio* 56 Sup.Ct. Rep. 532, 297 U.S. (1936).

[13] John Chambliss, "Constitutional Control," 9 *State Government* (July 1936) 139–42.

"protection" have risen beer and wine wars; the industry has naturally protested against such interstate discrimination; and, even though constitutionally protected in this field, the device has fallen into disrepute. Indeed, its extension to other fields would be a cause for grave concern. State action in regard to liquor "control" and the agricultural quarantines discussed elsewhere warn of the speed with which states would avail themselves of an opportunity to enact protective legislation. Criticism would always be hazardous since it would not be easy to discover whether a state was protecting its textile workers or guaranteeing a local market. And even if the aims of each state were above reproach, hopeless administrative and legislative confusion would result were each state to pass judgment on the laws and standards of production in each of the other forty-seven.[14]

Readjustments on the Local Level

No comprehensive solution to the various problems of conflicting areas, fiscal inequalities, and statutory vagueness which beset the lower levels of our decentralized system has been advanced. Some of the partial remedies will be considered in this section. It should be remembered that many of these could be usefully combined with reforms on other levels which have already been discussed.

While it is generally admitted that the depression-fostered types of federal-local co-operation described in Chapter VII have been of great temporary utility and significance, there is similar agreement that this mechanism cannot be considered as a major solution to our permanent problems in the field. It also seems wise, for reasons indicated in Chapter IX, to abandon the hope that municipal home rule will prove a widespread or significant factor in reform. Four major proposals remain to be appraised.

[14] J. E. Kallenbach, *Federal Cooperation with the States under the Commerce Clause.* (Ann Arbor: University of Michigan Press, 1941.)

(1) It has already been noted that the control of large urban areas by rurally controlled state legislatures has often handicapped municipal units in the efficient handling of local problems. The financial aspects of the "exploitation" have become increasingly irksome during the past decade when governmental revenues have been at low ebb. It is not surprising that the "city-state" idea, originally proposed by Charles E. Merriam and others[15] for Chicago, has attracted widespread attention.

True, there are advantages to the plan. In a state like Illinois there are two natural foci of loyalty—the cohesive unit which includes Chicago and its sphere of influence, and rural "down-state" Illinois. To a large extent their needs and their attitudes differ in innumerable ways. A separation would permit legislation which suited each area without exploiting the other.

One of the chief arguments against the proposal is its impracticability. Since the federal Constitution does not permit division of states without their consent, and since it is inconceivable that the powerful rural areas would ever relinquish their control of—or at least access to—the many items of taxable wealth found in large cities, there is little reason to believe that such a change would ever take place.

The plan is vulnerable to criticism on other scores, also. Much of the urban population is drawn from rural areas, and it is not wholly inequitable to use the present state setup as a medium of fiscal equalization between the two sections. Even in terms of urban selfishness, there is much to be said for extending adequate health and protective services to the "back country" surrounding the metropolis. And finally, as the automobile facilitates the expansion of urban populations into an increasingly accessible countryside, any ade-

[15]Charles E. Merriam, Spencer Parratt, and Albert Lepawsky, *The Government of the Metropolitan Region of Chicago.* (Chicago: University of Chicago Press, 1933) Chap. XXVIII.

quate planning programs must include more than the strictly urban area.

(2) Advanced long before 1930 but still advocated by many writers is the proposal to combine city governments with the units governing the surrounding county. A few metropolitan areas—notably Denver, San Francisco, and Philadelphia—have adopted this system. While the arrangement seems to ameliorate some of the problems of state-municipal relationships, it has not been entirely successful. The combined government is still very frequently at the mercy of an unsympathetic legislature. Moreover, except in rare instances, counties are too small for adequate metropolitan planning. The brilliant example of Los Angeles County is certainly an exception, but it must be remembered that it is by far the largest of all metropolitan counties. City-county consolidation in a somewhat broader sense than is usually implied might be applicable to some of the very large metropolitan areas which include more than one county. For instance, integration of the municipal governments of the Boston metropolitan area with those of the five counties which it involves would have beneficial effects. One of the great problems, of course, connected with metropolitan areas is the frequency with which they ignore state boundaries. There are twenty-two such areas, each of which extends into two states.[16] Greater Detroit actually lies in two countries. Simplification in such cases is exceedingly difficult, yet the governmental picture of metropolitan New York with its fourteen counties and one hundred and forty-five political subdivisions[17] is one which certainly demands radical retouching.

(3) Another proposal, by no means new but still vigorously

[16]Lepawsky, *op. cit.* (Chap. IX, n. 3), p. 25.

[17]Paul Studenski, *The Government of Metropolitan Areas in the United States.* (New York: National Municipal League, 1930) 27.

defended, is the establishment of metropolitan regional authorities. Usually a separate authority is originally set up for each specific purpose, but Lepawsky notes that there has been a slight tendency to consolidate the *ad hoc* authorities covering the same area.[18]

Merely to mention some of these authorities—the New York Port Authority, the Cleveland Metropolitan Park District, the Consolidated Boston Metropolitan District which furnishes sewage disposal, water, and parks services to the area—is to indicate how important a role they may play. Functions which would not otherwise be readily performed under our existing system of decentralization are made possible by this device, and there has been no inclination to abandon any of the authorities which have been set up. However, they do not by any means constitute a perfect solution to the problems we face. In the first place, not enough functions are handled by any one authority to make it an effective offset to state control or to enable it to serve as a fiscal equalizer. Second, it is questionable whether the addition of still another "level" to the already overcrowded governmental picture is not in itself fundamentally undesirable. Certainly the urban electorate is further confused by the addition, and the problems of government finance become even more complex than before. The extension of municipal jurisdiction over its metropolitan area and the assumption by such an enlarged city government of the functions now performed by *ad hoc* authorities would in most cases be a wise step, but in view of local jealousies a step so unlikely that these authorities remain a useful governmental mechanism.

(4) Probably the most challenging of all the suggestions for local readjustment is that made by William Anderson.[19]

[18]Lepawsky, *op. cit.* (Chap. IX, n. 3), p. 32.

[19]William Anderson, *The Units of Government in the United States.* (Chicago: Public Administration Service, 1934) 36.

He would substitute for the present chaotic structure—with its 3,000-odd counties, its 16,000 incorporated places, its 20,000 townships, its 127,000 school districts, overlapping, conflicting, and frustrating each other—a simplified scheme of 350 city-counties, about 2,000 rural counties, and about 15,000 incorporated places. The striking advantage of the plan is its elimination of many local "levels." Approximately four fifths of the citizens would be under the jurisdiction of only one local unit—only those in smaller incorporated places would be subject to both county and town.

It is, of course, possible to object to many details of this proposal. Perhaps 2,000 is still an unnecessarily large number of rural counties. Perhaps the New England town organization, which has on the whole proved satisfactory (at least in New England), should have been followed more closely. Perhaps inhabitants of smaller incorporated places who are made subject to rural counties are being inadequately protected from the sort of fiscal exploitation which under the present system so often forces city dwellers to pay in duplicate for overlapping city and county services.

At the moment the adoption of such a plan seems extremely unlikely. While annexation remains contingent upon popular vote, the incorporation of wealthy suburbs into the city-counties to which they reasonably belong will remain difficult. The consolidation of counties—with its attendant diminution of county offices—will be bitterly fought by incumbent—and would-be officials. Although state grants are, through conditions prejudicial to small units, forcing a limited amount of school district consolidation which is certainly beneficial, the school districts remain independent of the rest of local government. In fact, until the school men of the country realize that education will flourish best when it is part of—and not opposed to—the remaining governmental framework, the absorption of independent school units seems hopeless. Just, however, as the school district

consolidation may be a first hopeful step toward integration, the *ad hoc* metropolitan authority may some day develop into a new rational urban unit of government. Lepawsky notes this possibility hopefully.[20] However, these authorities in their present form are rarely sufficiently democratic in constitution.

In spite of all the criticisms and difficulties, Anderson's plan is valuable for its clear vision of the ultimate goal of local reform—the rational integration of local governmental units. It is obvious that any permanent achievement of the values of decentralization—adaptation to local needs, education in local self-government, administrative adaptability and co-ordination, as well as the successful functioning of a truly "social welfare" government—depends upon the emergence of a simple and workable local structure and upon the demise of the present system which simply confuses social and financial problems. Fiscal inequalities between local units are probably inevitable, and where they exist, the only solution undoubtedly lies in federal or state grants-in-aid. But no amount of subsidy or supervision can wholly cure the evils while the present basically irrational system continues.

Summary

The most prominent proposals for readjustment of our governmental system from the top have been those of amendments to give the federal government greater powers, especially over the field of business activity. Central control of our economic system seems likely to be increasingly necessary, but if it is to come about, it is to be hoped that other levels of government will be utilized.

Proposals for creating regionalism within the United States have been of somewhat vague nature. The most concrete proposal—the delegation of national legislative and admin-

[20]Lepawsky, *op. cit.* (Chap. IX, n. 3), p. 32.

istrative functions to regional authorities—seems unlikely to happen and would add more complications to our system. The T.V.A. cannot be described as political regionalism.

Federally collected, state-shared taxes are an important proposal of distinguished students of finance. If enacted they should be subject to requirements of a federal post audit of state finance and of a merit system.

Interstate co-operation—in which the Council of State Governments has played a leading part—is the most important mechanism proposed for readjustment on the intermediate level. These efforts seem likely to be successful chiefly in noncontroversial fields. Uniform state laws have likewise a limited usefulness. Federal-state co-operation is useful but does not greatly help with the major evils of decentralization. Removal of the protection of interstate commerce from various commodities has been suggested, but it seems to be both impracticable and in some ways undesirable.

On the local level none of the suggestions are wholly satisfactory. The new trend toward federal-local relations does not seem to be solving any major problems. Municipal home rule though useful, has definite limitations. The city-state idea seems to be impracticable and inequitable. City-county consolidation is useful but limited by the area of the county. Metropolitan regional authorities, although helpful for specific functions, add another complication to the chaos of local government. Most challenging, though not likely of adoption, is Professor Anderson's over-all scheme for a simplified local government.

These suggestions have been made by many students of American governmental problems and have grown out of various angles of approach. Some of them will be reconsidered and worked into the conclusions in the following chapter which largely grow out of the approach and the materials in this volume.

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Chapter XI

Conclusions

It is evident from the material presented in this essay that the recent reshuffling of governmental functions and the introduction of certain new techniques have only very partially solved the problems of our decentralized system. Yet those problems are so crucial that, unless they are successfully attacked, the federal system may be unable to withstand the pressure of internal maladjustments. In this chapter I shall attempt to discuss briefly some of the changes which promise to be practicable, effective in preserving the traditional values of decentralization, and adapted to the new needs and new goals of our altering economy. In the following epilogue some of the most significant points of view are briefly listed in a partial program for American decentralization.

Local Reforms

A good many of the present local difficulties can most satisfactorily be solved, as will be noted later, by changes in other governmental levels. Only two specific suggestions promise significant benefits. Most important is Anderson's proposal to consolidate—and thus to strengthen—local units wherever possible. Within limits, fiscal inequalities would thus be reduced, more comprehensive and intelligent adaptation of policies to natural—rather than arbitrary—areas

would be facilitated, development of home rule would be more feasible, and state legislative and administrative supervision would be forced into saner channels. Temporarily inconsistent with this proposal is the suggestion that the powers of metropolitan authorities be increased. However, from a long-range view the two developments might well prove complementary. As metropolitan authorities assume a larger number of local functions, and prove the value of integrated controls and services, the achievement of more effectively consolidated areas becomes less hopeless.

Improvements on the State Level

Probably the most critically defective part of our present system is the state government. Constitutionally, politically, and administratively the states are the core of American government—but at times there seems discouraging evidence that the core is rotting. Far-reaching reforms in state government seem imperative if the system is to be preserved, for in many cases the solution of local, interstate, federal-state, federal-local, and even federal problems depends upon the improvement of state legislation and administration.

Since the states have fairly complete constitutional control of local units, they could, through adequate legislation based on careful study, eliminate many of the avenues by which one local unit contributes to the evasion of the laws or ordinances of another. By wise supervision and fiscal equalization they could remedy many local fiscal difficulties. Interareal trade barriers—except in the relatively few cases in which the action definitely concerns "local" matters—could be eliminated by state action.

Certainly the states alone can solve most of the smaller problems of interstate evasion and competition. Here interstate co-operation of the type fostered by the Council of State Governments seems a sensible mechanism and indeed,

in the case of interstate trade barriers in the liquor business, the only constitutional mechanism. Such joint state action would also be useful in the fields of public works and of conservation. Incidentally it should be noted that here the philosophy of regionalism has strong psychological value. A regional sense of identity of interest would greatly facilitate interstate co-operation where the program is largely regional in scope.

Even in those fields in which federal activity seems to have become dominant the regeneration of the states is essential to continued decentralization. Embattled critics of the control exercised by the federal government over its grants-in-aid overlook the fact that until the states show themselves willing and able to assume fuller administrative responsibility, it will not be turned over to them. The cavalier use of public-assistance and unemployment-compensation mechanisms for political purposes by several states indicates that the proper time has not yet arrived. In turn, until the states can assume such responsibility, effective adaptation by the federal government to local situations and proper co-ordination with other agencies on state and local levels will be largely ignored by federal authorities, legislative or administrative.

The problems raised by federal-local relations have already been outlined and are probably inevitable so long as the federal government seems to feel it essential to deal directly with local governments. Only when the states show themselves efficient and well informed in their contacts with those units can they legitimately demand their rightful place in the hierarchy as the proper agent for local units in federal-local contacts.

Effective adaptation to local needs of the policies of direct federal expenditure programs is also contingent upon action by the states. State personnel must be so improved and stabilized that it will be able to supply pertinent information

and thoughtful advice to federal, regional, and district officers. Such a personnel is still lacking in most states.

As a result of joint pressure from both federal and local governments state standards have been somewhat raised during the past decade, but considerable improvement is still necessary. States must install workable merit systems which include the higher ranks in the service. They should probably reduce the number of legislators, and should certainly increase legislative salaries, and prolong the sessions. They must create agencies for research on social, economic, and financial problems, and must encourage their use by lawmakers so that thought precedes action. If they cannot or will not do these things, the failure of the states may well doom the whole American tradition and system of decentralization.

New Federal Powers

Violent outcries to the contrary, it cannot be said that the increase in direct federal activity during recent years has been alarming. In fact, certain other functions might well—and safely—be taken over by the central government.

In some cases the chaotic situation resulting from interstate and local trade barriers could be cured by state action, but in others federal legislation seems the reasonable solution. Freedom of commerce between the states is traditionally—and constitutionally—an integral part of the American plan, and the use of state taxing or police powers for the primary purpose of discouraging interstate commerce can hardly be deemed a legitimate exercise of states' rights. Congressional legislation which, in order to protect such commerce, established uniform quarantine standards and set limits to the use of state taxation for discriminatory purposes would seem wholly unexceptionable and advantageous.

The federal government might well take over the administration of unemployment compensation and the employ-

ment service. A federal tax is, in a very real sense, the basis of these plans, and almost all expenses of administration are now borne by the federal government. In addition, the pool of labor, which the insurance and employment services cover, is in no sense divided on a state basis. Administration by the states has proved expensive and not above criticism. Although administrative decentralization is essential in such an extensive program, there is little to be said for an artificial political decentralization on a state basis.

Because of the ease of interstate evasion described in Chapter III, the states have never dealt very satisfactorily with the exceedingly important field of incorporation. Moreover, the chartering of corporations comes very close to being a "national" problem today, when businesses and industries are so often nationwide in their scope and influence. To restrict this function to the states is, in effect, to set up another governmentally untouchable zone. Federal assumption of this power would derogate little from state prestige and would be justified on these other scores.

This volume is not a brief for unlimited federal expansion. It seems probable that the fields of education, welfare, and —to a great extent—police protection, should be reserved to state and local governments, and that where federal aid is necessary it should be limited to unconditional—or largely unconditional—grants. These are activities in which administrative decentralization, adaptation to local needs, education of citizens, and the diffusion of political power are so important that they outweigh completely any slight gains in efficiency from centralized control.

Federal Administration

The experience of the 1930's teaches us that, in fields of direct federal activity, devices for internal administrative decentralization and for increased consultation with state

and local officials on matters of policy should be encouraged. The failure to work out such a course has accounted for many of the difficulties encountered in the past by the Department of Agriculture and W.P.A.

Here a certain type of "regionalism" is of great value. Regions have already proved to be very satisfactory units of administrative decentralization for many federal bureaus in such varied activities as forestry, social security, and agricultural research. If further thought and study were devoted to regional planning, the adaptation of federal policies to local needs would be easier. Another desirable advance would be the integration of the policies and actions of several departments within each regional area. The best results would, however, be achieved if regionalism were combined with increased co-operation with state and local officials. The latter should at least be consulted, and their suggestions respected, on matters which involve knowledge of the local situation.

It was pointed out in Chapter V that, on the whole, strides are being made toward co-operative federal-state-local approaches to various problems. In some cases the federal government is attempting to secure local knowledge and advice through contacts with unofficial local representatives. In other cases it is attempting to utilize the existing governmental machinery of the various levels.

Another urgently needed administrative reform is the "regularization" of certain federal activities. That some danger always inheres in a large concentration of power is undoubtedly true, but the danger is increased when the use of that power is arbitrary. During the past eight years there have been innumerable charges that P.W.A., W.P.A., R.F.C., T.V.A. and other federal agencies have been prostituted to political purposes. Although many of the charges were without foundation, there is evidence to support a few of them. True or not, they constitute a danger signal. In so

far as the federal government actually could be made a tool for personal or party advantage, there is an ever-present temptation to would-be "dictators" to gain control of it by fair means or foul. In so far as power is used arbitrarily—even though at the moment legitimately and beneficially—this danger exists, and the outcry against centralization is justified and inevitable. If then we are to have a federal government adequate to the increased demands upon it and at the same time above suspicion, considerable attention should be paid to methods for rendering it more genuinely "responsible." Vagueness of policy not only facilitates undesirable activities, it also encourages purely political opposition to basically advantageous programs.

It is impossible, of course, to suggest a blanket formula for eliminating the possibility of such charges as we have mentioned, but a few suggestions may be offered. If definite objective criteria for the determination of public works allotments had been made public by P.W.A., charges that New Deal Democrats were disproportionately favored would have been possible only if evidence were available. Had the W.P.A. staff been selected on a merit basis, there would have been fewer claims that it was a political "machine." Consistent prosecution of all offenders by the N.R.A. would have lessened the talk about "government by crackdown." Had specific criteria for R.F.C. loans been established and published, that agency would have avoided some criticism. The federal government possesses—and undoubtedly should possess—extensive and vital powers, but these should be administered in such a way that the shadow as well as the substance of favoritism is avoided.

Federal Grants

It has already been indicated in Chapter VI that the present federal system of grants-in-aid lacks plan and inte-

gration. It is, of course, undesirable to formulate a rigid program which ignores changing circumstances and changing objectives, but within what seems to be the present general sphere of grants, a few suggestions can be made.

One general remark seems in order. The grants-in-aid system should not become so extensive that the party nationally in power could obstruct all—or most—of the activities of an opposition party or faction which had control in some states. Although that danger is still remote, it does exist as a potentiality wherever, as in this country, the federal resources far outweigh those of other levels. A desirable plan may be the "block grant" system providing general support for subordinate units on objectively determined criteria of need. Under such a device substantial support for poorer states and fiscal equalization could be achieved without the political coercion of state officials. However, if this type of financial aid is introduced it would probably be well to require, in addition to minimum state administrative standards, minimum performance standards in certain fields of nation-wide concern. For instance, no state should be free to omit adequate public health services from its governmental program.

If the functional grants-in-aid system is to continue, each new function should be carefully appraised in the light of the goals of our federal system. Let us take police, education, and other functions as examples. Too direct a fiscal relationship between the federal government and state and local police forces apparently should be avoided. A more cordial co-operation is definitely to be encouraged, but in this field the dependence of the lower levels involves considerable danger to true decentralization of power.

During the past few years various programs for federal aid to education have been widely discussed. Practically all the arguments for decentralization presented in Chapter II seem to apply with considerable force to this field of ac-

tivity. A very genuine citizen interest—and citizen training—is secured through state and local operation and control of the school systems. Every opportunity for local adaptation exists. Moreover, if "aid" were to involve administrative powers over local education, it seems likely that no central agency could possibly regulate in a satisfactory manner the largest administrative system in the country.

In spite of all these important reasons for maintaining educational decentralization, the arguments are not all on one side, for the very critical problem of finances cannot be overlooked. According to the Advisory Committee on Education a dozen poor states, making reasonable efforts to educate their children, could raise only $10 to $30 per year per child. A comparable effort on the part of six wealthier states would produce more than $70 a year per child for educational purposes. Entirely aside from the general desirability of maintaining some national minimum standards, this situation is not even locally beneficial to the wealthy states. Many of these are not producing enough children to keep their own population stable, while the poorer states are rearing children who will in time scatter throughout the country. High standards of education within a state are not an adequate solution when the *adult* population of that state includes a large number of badly educated persons from poorer areas. In a country where mobility is high, educational standards are of nation-wide concern. The Advisory Committee on Education, in its remarkably careful and thoughtful report, recommended federal aid for education on an equalization basis—at least for the poorer states. It did, however, recognize the enormous advantages of decentralization in this field, and advocated the assignment of absolutely minimal powers to the federal administrative agency. This course seems, on the whole, to promise the best solution.

Other extensions of federal aid can be recommended with

even less hesitation. In health, as in education, national standards depend, in a country like ours, on local standards. Adequate federal aid should be extended to insure a nation-wide health program. There can be little doubt that, in the welfare field, grants should be extended to include general relief. The dislocations which result when part—but not all—of a unified field receives federal aid have been noted in Chapter VI. It would certainly be desirable for the central government to increase its subsidization of public housing. In fact, in terms of the values we have been discussing, federal housing activity through grants involves few dangers and would be of great benefit in poorer areas where money is sorely needed for this purpose.

In the case of the conservation of soil and other natural resources, where adaptation to local needs is exceedingly important, it seems reasonable to suggest that decreased direct federal expenditure and increased federal aid would be a desirable step.

Administratively, the grant-in-aid system—both state and federal—should carefully keep the middle course between rigidity and laxity. The various control devices should be so judiciously used as to permit genuine experimentation and policy adaptation on the state and local levels. At the same time the granting agency should recognize its own ultimate responsibility for the maintenance of administrative standards and for the rapid and effective dissemination of new ideas and improved techniques among subordinate units.

The development of the best sort of administrative federalism requires careful thought by administrators and politicians in both federal and state governments. Federal administrators must learn to restrain themselves from the tendency to pass on every petty detail so that nothing will go wrong—a tendency which is one of the major weaknesses of Washington administration. State politicians and officials must learn that they can co-operate in nation-wide programs

without losing the essential elements of independence. As far as possible federal administrative orders governing state actions should be limited to the setting of standards. These things can be accomplished if both sides will retain a balanced view of what our federal system is trying to achieve.

If such administrative statesmanship is practiced, there should be little danger to our decentralized system from the fiscal centralization involved in grants-in-aid. I am inclined to feel that the many people who think local self-government is doomed when central financial grants begin are unnecessarily alarmist. Great Britain has used grants-in-aid as well as block grants to develop a strong system of local government. If we are wise we can use grants to develop our complete system of decentralization on a more substantial and permanent basis than it is now.

Conclusion

This brief treatment of a subject as vital as it is controversial inevitably contains opinions on problems possessing broad social, political, and economic implications, opinions which are not infallible. In the first place, there is urgent need of further research in the field of governmental relationships before authoritative conclusions are justifiable. For instance—to cite only a few of the more obvious gaps—we lack an exhaustive appraisal of the impact of grants-in-aid on the machinery of state government; the relative standards of state and local government have never been adequately studied; we do not know with any precision exactly how excessive are the costs of our present local governmental structure, or how those costs can best be reduced with minimum governmental and social loss.

Furthermore, there are many questions which cannot be answered by research. There is no technique, for example, by which we can put "education of citizenry through local

self-government" in one pan of the scale and "domination by petty local politicians through local self-government" in the other pan, and accurately determine whether the gain outbalances the loss. We cannot, in a word, escape the responsibility of using our own judgment in many cases. Some suggestions have been tentatively put forward in this study and summarized in the Epilogue to assist in the forming of more objective judgments by clarifying the goals of our government, outlining the values and weaknesses of the decentralized system, and applying these criteria to a few important examples of recent governmental action. These suggestions, however, constitute only a partial program.

It seems particularly important to remember that the outstanding charge leveled at decentralization is that of inefficiency; the outstanding charge leveled at centralization is that of tyranny. To achieve efficiency plus safety—which seems to be the common goal—readjustments on all levels of government are essential. It is undoubtedly true that we cannot have efficiency without permitting the federal government to assume those functions—however untraditional—which it alone can perform properly, or without considerably improving the local structure. It is equally true that safety depends on increased federal adaptability and responsibility and on local units sufficiently reinvigorated to resist undue state domination. Nevertheless, it is on the state level that reform is most necessary and most significant. We hear much of federal activity these days, but the bulk of governmental problems remains within the state sphere. It seems wise to repeat that if the states are not efficient, American government considered as a system, is not efficient—or, for that matter, secure. Only efficient units can be strong units, and just in so far as the states are neither, the federal government will become increasingly dominant. The future of the states is, in a very practical sense, the future of the federal system.

Epilogue

A Program for American Decentralization

1. Areas of local units should be increased to sizes more consistent with administration of contemporary governmental functions. When this is accomplished, home rule should be more fully developed.

2. State governments should improve the quality of supervision of localities and equalize their fiscal differences. As one means of achieving the latter, a system of block grants based on objective criteria and conditioned on certain standards of administrative efficiency might be introduced—at least experimentally.

3. State governments should eliminate interstate evasion and competition by co-operative activity through such agencies as the Council of State Governments.

4. Improvement of state legislative and administrative activities is absolutely essential to the preservation of our system of decentralization.

5. Direct federal-local relations, though not intrinsically desirable, should not be discouraged until the states can equip themselves to handle their local governmental problems.

6. Increased federal activity in such fields as control of trade barriers, administration of unemployment compensation and the employment services, and the chartering of

corporations shall be viewed as a natural allocation of functions which is not necessarily damaging to our decentralized system.

7. In the case of such activities as police protection and education, federal participation should be limited to unconditional—or largely unconditional—grants.

8. Federal administrative regionalism is desirable and should be encouraged to the point where regional officials can make co-operative federal-state-local approaches to regional problems.

9. Regularization of the administrative procedures of many federal agencies is essential if the dangers of excessively centralized power are to be avoided.

10. Block grants to the states, distributed on objectively determined criteria of need and conditioned on standards of general administrative efficiency, would probably be desirable. Performance of certain basic services might also be required.

11. Each extension of the present functional grant system should be critically appraised to determine its effect on the federal system.

12. The administration of grants-in-aid should permit genuine experimentation and adaptation on state and local levels, but should also be designed to secure administrative efficiency and rapid exchange of ideas.

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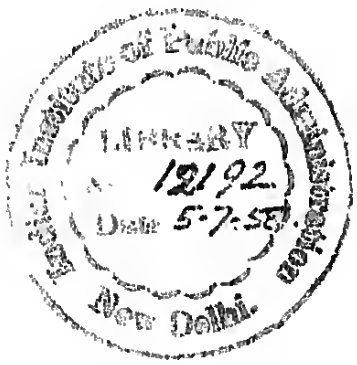

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